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ABSTRACT

This hearing report concerns possible antitrust and anticompetitive violations by the College Bowl Alliance consisting of the Southeastern Athletic Conference (SEC), the Big 12, the Atlantic Coast Conference (ACC), and the Big East, as well as Notre Dame University; and after 1998 will include PAC-10, Big 10, and the Rose Bowl. An agreement was made between the College Alliance and three Bowls: Sugar Bowl, Orange Bowl, and Fiesta Bowl. Under the terms of the agreement, each year a different Alliance bowl is allowed to choose first from among the pool of Alliance conference champions and at-large teams. The stated purpose of this arrangement is to provide a No. 1 versus No. 2 championship match-up every year in a different bowl game. Excluded non-Alliance teams have raised issues involving the selection methods, the consequent disparity in television revenues, and related effects such as the inability to recruit top athletes by non-Alliance teams. Witnesses were grouped into two panels each consisting of individuals for or against the Alliance. Testifying against the Alliance included Senators Mitch McConnell (Kentucky), Robert Bennett (Utah), Craig Thomas (Wyoming), and Michael Enzi (Wyoming); as well as Karl Benson, commissioner of the Western Athletic Conference, and Ron Cooper, former head football coach, University of Louisville, Kentucky. Those testifying in favor of the College Bowl Alliance include Wally Richardson, a graduate of Penn State University, Roy F. Kramer, commissioner of the SEC, James E. Delaney, commissioner of the Big Ten Conference, and Cedric W. Dempsey, executive director of the National Collegiate Athletic Association (NCAA). An appendix

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includes the transcript of a question-and-answer session between committee members and various witnesses. (BF)

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ED 461 320

S. HRG. 105–126

ANTITRUST IMPLICATIONS OF THE COLLEGE BOWL ALLIANCE

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
BUSINESS RIGHTS, AND COMPETITION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

TO EXAMINE ANTITRUST AND COMPETITIVE ISSUES WITHIN THE COLLEGE FOOTBALL BOWL ALLIANCE, WHICH CONSISTS OF THE SOUTHEASTERN ATHLETIC CONFERENCE, THE BIG 12, THE ATLANTIC COAST CONFERENCE, AND THE BIG EAST, AS WELL AS THE UNIVERSITY OF NOTRE DAME

MAY 22, 1997

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page
DeWine, Hon. Mike, U.S. Senator from the State of Ohio 1
Kohl, Hon. Herbert, U.S. Senator from the State of Wisconsin 4
Hatch, Hon. Orrin G., U.S. Senator from the State of Utah 5
Sessions, Hon. Jeff, U.S. Senator from the State of Alabama 6

CHRONOLOGICAL LIST OF WITNESSES

Hon. Mitch McConnell, U.S. Senator from the State of Kentucky 8
Hon. Robert F. Bennett, U.S. Senator from the State of Utah 12
Hon. Craig Thomas, U.S. Senator from the State of Wyoming 15
Hon. Michael Enzi, U.S. Senator from the State of Wyoming 19
Panel consisting of Ron Cooper, head football coach, University of Louisville, Louisville, KY; Wally Richardson, football player, Pennslyvania State University, State College, PA; Richard Peace, football player, University of Wyoming, Laramie, WY; Roy Kramer, commissioner, Southeastern Conference, Birmingham, AL; Karl Benson, commissioner, Western Athletic Conference, Englewood, CO; and Cedric W. Dempsey, executive director, National Collegiate Athletic Association, Overland Park, KS 24
Panel consisting of Gary R. Roberts, professor of law and sports law program director, Tulane Law School, New Orleans, LA; David L. Baker, special assistant to the president, University of Wyoming, Laramie, WY; James E. Delany, commissioner, Big 10 Conference, Park Ridge, IL; Chad Lewis, football player, Brigham Young University, Provo, UT; Tim Layden, senior writer, Sports Illustrated Magazine, New York, NY; and Richard Circuit, board member, Plymouth Holiday Bowl, San Diego, CA 89

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Baker, David L.:
  Testimony 101
  Prepared statement 102
Bennett, Hon. Robert F.:
  Testimony 12
  Prepared statement 14
Benson, Karl:
  Testimony 38
  Prepared statement 39
Cooper, Ron:
  Testimony 24
  Prepared statement 26
Circuit, Richard:
  Testimony 112
  Position statement of the Plymouth Holiday Bowl 114
Delany, James E.:
  Testimony 103
  Prepared statement 105
Dempsey, Cedric W.:
  Testimony 40
  Prepared statement 43
    Appendix A: NCAA Divisions I-AA, II and III football championships history 47
    Appendix B: NCAA legislative requirements and policies applicable to sponsoring agencies seeking initial certification of a postseason football game 48

4

Page
DeWine, Hon. Mike: Prepared statement of John H.B. French, CEO, Pasadena Tournament of Roses Association ... 3
Enzi, Hon. Michael:
  Testimony ... 19
  Prepared statement ... 20
Kramer, Roy F.:
  Testimony ... 31
  Prepared statement ... 33
Layden, Tim:
  Testimony ... 109
  Prepared statement ... 111
Lewis, Chad:
  Testimony ... 107
  Prepared statement ... 108
McConnell, Hon. Mitch: Testimony ... 8
Peace, Richard: Testimony ... 29
Richardson, Wally: Testimony ... 28
Roberts, Gary R.:
  Testimony ... 89
  Prepared statement ... 91
Thomas, Hon. Craig:
  Testimony ... 15
  Prepared statement ... 16

APPENDIX

QUESTIONS AND ANSWERS

Response of David L. Baker to a question from Senator Thurmond ... 125
Responses of Karl Benson to questions from Senator DeWine ... 127
Responses of Richard K. Circuit to questions from Senators:
  McConnell ... 127
  Thurmond ... 128
Responses of James E. Delany to questions from Senators:
  McConnell ... 128
  Thurmond ... 131
Responses of Cedric W. Dempsey to questions from Senator McConnell ... 132
Responses of Roy F. Kramer to questions from Senators:
  McConnell ... 134
  Thurmond ... 151
Responses of Gary R. Roberts to questions from Senator McConnell ... 152

ADDITIONAL SUBMISSIONS FOR THE RECORD

Prepared statements of:
  Steve Ehrhart on behalf of St. Jude Liberty Bowl ... 156
  Roy F. Kramer, commissioner of the Southeastern Conference, in response to the statement of Professor Gary Roberts of Tulane University Law School ... 157

ANTITRUST IMPLICATIONS OF THE COLLEGE BOWL ALLIANCE

THURSDAY, MAY 22, 1997

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS
AND COMPETITION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Mike DeWine (chairman of the subcommittee) presiding.

Also present: Senators Hatch, Kohl, and Sessions (ex officio).

OPENING STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Good afternoon. We welcome all of you to the Judiciary Committee Subcommittee on Antitrust, Business Rights and Competition. Our hearing this afternoon concerns the Bowl Alliance.

In recent years, there has been increasing dissatisfaction with the Division I–A college football bowl system. A big part of the problem has been that pre-set agreements between the bowls and individual conferences made it difficult to select the best possible match-ups for the bowl games.

Another part of the problem has been the practice of bowl games making offers to teams before the season actually ends. These factors have made it especially difficult to select a No. 1 versus No. 2 championship game match-up, clearly the contest most players and most fans wanted to see. The Bowl Alliance is a response to this perceived problem in selecting bowl game match-ups.

Let me start by briefly describing how the Bowl Alliance works. The Alliance itself is currently made up of four major football conferences—the Southeastern Athletic Conference, the SEC; the Big 12; the Atlantic Coast Conference, the ACC; and the Big East; as well as Notre Dame.

The Alliance has an agreement with three bowls—the Sugar Bowl, the Orange Bowl, and the Fiesta Bowl. Under the terms of the agreement, each year the conference champion from each of the four Alliance conferences has a guaranteed spot in one of the three Alliance bowls. The remaining two spots are filled on an at-large basis. Within certain guidelines, the bowls themselves decide which at-large teams are offered a spot. Notre Dame receives no guarantee.

6

Each year, a different Alliance bowl is allowed to choose first from among the pool of Alliance conference champions and at-large teams. The stated purpose of this arrangement is to provide a No. 1 versus No. 2 championship match-up, every year, in a different bowl game.

Under the terms of the agreement, after the 1998 regular season—in other words, the bowl games beginning to be played January 1999—the PAC–10 and Big 10 will be brought into the arrangement, along with the Rose Bowl. The terms of their agreements are slightly different from the others. The PAC–10 and Big 10 champions will continue to meet in the Rose Bowl, except that if either of those champions is ranked No. 1 or No. 2, they will then play in whichever Alliance bowl is hosting the championship match-up in that particular year.

Also, in the year when the Rose Bowl is designated to hold the national championship game, the Rose Bowl slots will be reserved for the No. 1 and No. 2 ranked schools, whether or not those teams hail from the Pac–10 or the Big 10. Either way, both the Pac–10 and the Big 10 champions will be available for match-ups in a possible No. 1 versus No. 2 championship game.

The Alliance has been successful in creating more national championship games, but it has also raised competitive concerns. Specifically, the Alliance does not include a number of conferences, including the Western Athletic Conference and the Conference USA. Schools from the excluded conferences are concerned that they are being denied the opportunity to compete in the high-visibility, high-prestige major bowl games. This concern was heightened last year when Brigham Young University did not receive an at-large bid to one of the Alliance bowls, in spite of the fact that they were ranked No. 5 in the Nation.

As I have studied this issue, it has become clear that the Alliance raises antitrust and competitive concerns that need to be examined, which we intend to do today. In fact, any time we see a group of competitors, such as the conferences, agreeing with each other instead of competing with each other, that is a potential antitrust problem.

In this instance, rather than compete with each other for slots in the major bowl games, the Alliance conferences have agreed among themselves to an arrangement which guarantees that their champions are given the opportunity to play in the Alliance bowls, an opportunity that is often not available to the non-Alliance teams.

Let me also note that this is not just a sports issue. This obviously is big business. Last year, the Alliance bowl games paid over $8 million to each team that played. The largest pay-out in a non-Alliance bowl game was $2 million, and many paid significantly less than that. We cannot forget, however, that this big business has a human element to it as well. The essence of college football is the student-athletes who play it and we must consider the impact of this Alliance on those student-athletes, and we will have the opportunity during the hearing this afternoon to hear from several of them.

Now, in order to determine if this type of agreement is an antitrust violation, we must balance the anticompetitive effects of the

Alliance against the procompetitive effects. For example, the Alliance system has the anticompetitive effect of reserving slots in major bowl games for conference champions and limiting the access of non-Alliance teams to those games. On the other hand, it has the procompetitive effect of enhancing the possibility of a No. 1 versus No. 2 national championship game.

We must balance these and other factors, and also evaluate whether there are any, "less restrictive alternatives," that ought to be considered; that is, whether there are any arrangements that would give college football the procompetitive benefits of the Alliance without the anticompetitive effects. For example, is a playoff system a better answer?

This is a serious and very complicated issue, and we are holding this hearing this afternoon in order to examine it as thoroughly as possible. We will hear from a distinguished panel of Senators who are concerned about this issue, and we will receive testimony from a number of individuals who have spent their professional lives dealing with these issues.

We have invited people with views that range all across the spectrum, from every walk of college life—coach, player, university administrator, conference commissioner, NCAA director. We have also invited a distinguished sports writer with a great deal of experience covering college football, and a sports law expert, to help us examine all the facets of this problem.

I also want to note for the record that we have contacted the ABC Network, the Sugar Bowl, the Orange Bowl, and the Fiesta Bowl, and none of these organizations were interested in testifying before us this afternoon. The Rose Bowl did not wish to send a representative either, but they have submitted written testimony which I will now enter, without objection, into the record. It will be so entered into the record and made a permanent part of the record of this committee and of these hearings.

[The prepared statement of the Rose Bowl follows:]

PREPARED STATEMENT OF JOHN H. B. FRENCH, CEO, PASADENA TOURNAMENT OF ROSES ASSOCIATION

The Pasadena Tournament of Roses Association, a non-profit, charitable, volunteer organization founded in Pasadena, California, in 1895, annually produces the Rose Parade and Rose Bowl Game which have in-person attendance of approximately one million and 100,000 people, and television audiences around the world of 400,000,000 and 100,000,000 respectively.

The first intercollegiate post-season football game was played in Pasadena in 1902, and a stadium was built for the 1923 game and named the Rose Bowl. Since then the Rose Bowl Game has become a great American New Year's Day tradition providing a meeting between the championship football teams from the 21 universities of the Pacific-10 and Big Ten Conferences.

Representatives of the Association have participated in various meetings, studies and discussions regarding national championship games, playoffs, and keeping the bowl traditions in place for many years. It has been the consistent position of the Association to preserve the best of the history, traditions, community pride and economic impact of the Rose Bowl Game. In deference to the desires of our conference and university colleagues we have modified our position to include, at the same time, the value of their teams being eligible to compete for a National Championship title in division I-A football without creating a multi-game playoff tournament.

Over the past year and a half the Association worked with the presidents and commissioners of the Big Ten and Pacific-10 Conferences and ABC Sports to facilitate the conferences' position that their champions need to be eligible to play for the "National Championship" when they are ranked numbers one or two in the country at the end of the regular season. The result was a proposal to the Alliance that resulted in the creation of the new Alliance format that is planned to be implemented following the regular seasons from 1998 through 2004 with a possible early termination following the National Championship game of 2002.

The Association is supportive of the new Alliance format. We would also support the opportunity for participation by any I–A university's team ranked among the highest teams in the nation along with the participating conference champions and the University of Notre Dame.

This past bowl season over $100,000,000 was generated and distributed to the thirty-six teams participating in eighteen bowl games. The new Alliance alone should generate payoffs in the $100,000,000 range. The NCAA has just certified two new additional bowls and there is at least one more applying for certification next year. This would bring the non-Alliance bowls to seventeen. The twenty to twenty-one bowls will provide up to 42 teams and over 4,000 student-athletes the opportunity, perhaps of a lifetime, to play in a post-season game each year, while at the same time increasing the total amount of money to be distributed to nearly $150,000,000.

The Association believes the new Alliance serves to meet most of the goals of the NCAA, the universities, the fans and the bowls. It has the capability of generating substantially more money to support athletic programs at all participating institutions, and provides for the top two teams in the nation to play each other in the final game of the year without interfering with academic schedules, lengthening the season or exploiting athletes. It may or may not prove to be the ultimate resolution, and it can be refined, but it deserves at least a four-year period in which to try.

Senator DEWINE. Let me be clear that there is more to this hearing than just the antitrust laws. This subcommittee has jurisdiction and responsibility for business rights and competition, also, and this hearing is fundamentally about basic fairness and it is about the right to compete on an equal basis. Do the non-Alliance schools get a fair shot at the major bowl games? We intend to try to find out.

The subcommittee's responsibility is clear, and the agenda at this hearing is simple: To explore the facts surrounding the Alliance and try to determine if it is pro-competitive or anti-competitive, good for college football or not good for college football. I think the panels will be lively and interesting, and we hope that the hearing will shed some light on a very complicated issue.

Let me turn now to the ranking minority member of the subcommittee, Senator Kohl.

STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. I thank you, Mr. Chairman. A few years ago, we celebrated the 100th anniversary of the Sherman Antitrust Act. That law, written by John Sherman of Ohio, has been enormously important in strengthening free market fairness, ensuring economic opportunity, and in promoting consumer welfare.

I am not sure, however, that the author ever intended it to apply to college football. In fact, given the truly important antitrust matters that we do have to address this year, like telecommunications, health care, and energy deregulation, what I am sure about is that Congress does not need to legislate here.

Still, this committee doesn't always need to be a spring board to legislative action. Sometimes, it is best seen as a forum to discuss a variety of competition issues, even when they relate to sports. In that context, let me make a few brief points.

First, the notion of the Bowl Alliance does make sense. It gets us closer to determining a true national champion for college football, which is probably what the American people would like to see.

Extending the season even more, as you would have to do under a true playoff approach, would do more harm than good to what little is left of the concept of student-athlete. Admittedly, the current approach is not perfect, but once the Big 10 and the Pac–10 start participating in 1999, it will be even more likely to match the two top teams.

Second, let's keep in mind that amateur sports in America is a business, and a very big business. So it is not surprising that post-season bowls are as much about ratings as rankings, as much about sponsorship as sportsmanship, and as much about the bottom line as the line of scrimmage. This may not be right, but it is the reality.

So it is hard to blame a bowl for choosing Nebraska instead of BYU, or the Alliance for giving a priority to Notre Dame. After all, more Americans will travel to see the Fighting Irish than, say, to see the Fighting Rainbows of Hawaii. My sense is that these financial factors, rather than antitrust collusion, are the real reasons that smaller, less widely known, but perhaps more deserving schools feel that they are being left out in the cold.

Having said all this, there is often room for some improvement, even in college football. So I say to our witnesses today—Mr. Kramer, Mr. Dempsey, Mr. Delany, and Mr. Benson—I would like to make a modest proposal. Work this out amongst yourselves. Don't look to the Government or to the court system to resolve this issue. It is not a matter for litigation or for legislation. Instead, I recommend that you sit in a room by yourselves without any lawyers, lock the door, and have a reasonable discussion, and then try to come up with something, if possible, that benefits the American public. You will certainly come up with a quicker, more effective solution than one that we could provide for you here, and it will be a solution that Senator Sherman would be proud of.

Thank you, Mr. Chairman.

Senator DEWINE. Thank you, Senator Kohl.

Let me now turn to the chairman of the full Judiciary Committee, Senator Hatch.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. You seem to be coming up with the most interesting subjects for subcommittee hearings, although you may cause groups to stop describing themselves as "alliances" after your hearing on the airline alliance last month and the College Football Bowl Alliance today.

This hearing is of particular interest to me because the treatment of Brigham Young University last year is a prime example of the type of conduct by the Alliance bowls that has raised concerns across the country. These concerns focus on fairness in choosing the college football teams that will play in the major post-season bowls that are so popular on New Year's Day each year.

Last year, BYU had a wonderful football season, winning 13 of its games and losing only 1. The season was tremendously exciting for BYU players and fans alike, and, of course, we are all very proud of them. BYU was the fifth-ranked team in the Nation and expectations were very high that the team would be in one of the three Alliance bowls. That did not occur, however, dashing the hopes of all of the players and greatly disappointing BYU fans like me.

Unfortunately, the harm was not merely disappointment, but the loss of $6 million that BYU and its conference would have received from an Alliance bowl over the amount actually received from the Cotton Bowl. I don't mean to find fault with the Cotton Bowl, which itself was hurt by the Alliance system. It used to be one of the major bowls in the country and now finds itself not one of them, or at least not one of the major, prime bowls. In addition, BYU lost the greater exposure and prestige of being in an Alliance bowl, which hurts its ability to recruit top athletes.

This is a simple question and issue of fairness. When a team has the talent and puts in the hard work to be one of the best in the country, that team should be in one of the best bowls. Basic American fairness dictates that bowl teams should be chosen on the merits. That is best for the schools involved and for fans nationwide who want to see exciting bowl games.

Of course, a desire for fairness and decisions based on merits does not mean that the current Alliance system is in violation of the antitrust laws. Whether or not an antitrust violation exists is best determined by the experts in the Antitrust Division or, if necessary, in the courts. But if the Alliance system can be improved to address these basic issues of fairness, as I understand the Alliance system is seeking to do, I expect that the antitrust concerns will be resolved as well.

So I want to thank you, Mr. Chairman, for holding this hearing on a matter of such interest to so many Utahns and others throughout the country, and I look forward to hearing the testimony of all the witnesses, especially Chad Lewis from BYU.

We are happy to welcome you here, Chad, and have you here, one of the great tight ends.

Frankly, I can't stay for the whole hearing, but I certainly appreciate you holding it and I look forward to the results of it.

Senator DEWINE. Thank you very much.

Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I would like to thank you for allowing me the opportunity to join your subcommittee and discuss the College Football Alliance and its effect on the fans and the players and the universities, not only across the United States, but also in my home State of Alabama.

Mr. Chairman, before I begin, I would like to take a minute to recognize the commissioner of the Southeastern Conference, Mr. Roy Kramer. The Southeastern Conference, which is located in Birmingham, AL, includes two Alabama universities which are important to me—Auburn University, where I expect my son to enroll this fall, and the University of Alabama, where I had the privilege of graduating from law school. Mr. Chairman, I applaud the passion and dedication that Commissioner Kramer has displayed in dealing with the College Football Bowl Alliance. I welcome his leadership on this issue.

The College Football Bowl Alliance promises to provide the fans of college football with a national championship game every year. For many years, I have heard football fans and media alike grumble that the college football season ends without a champion, except when crowned by the sports media and coaches, and the issue rarely, if ever, is decided on the football field.

Since the early 1990's, with the formation of the Bowl Coalition and later the Bowl Alliance, the national championship of college football has been decided on the field three times in the last 5 years. When the Rose Bowl comes aboard after the 1998 season, for the first time in history college football can expect a national championship game very single year. This will be a great benefit to the fans of college football and has been made possible by the efforts of a number of major football conferences, including Commissioner Kramer's Southeastern Conference, which is located in Birmingham.

Having now created a system to provide the fans of college football with a champion game that people have asked for for years, now many of these same conferences find themselves brought in before our committee now because people are not happy with the teams who have been selected.

We have talked a lot, I think, in our committee about judicial activism. We might wonder if we are not involved in a bit of senatorial activism. I am not sure that this is, as Senator Kohl said, the proper place to be deciding football selections for bowl games.

The history of relationships between certain bowls and conferences is a long and very proud one. For many years, the Southeastern Conference champion played in the Sugar Bowl. Of course, before that, in the 1930's, they had a tremendous reputation as a winner in the Rose Bowl, but they were shut out of that by the Big 10 and Pac–10. Then the Southeastern Conference played in the Sugar Bowl, but that was a voluntary decision.

Since the end of World War II, the champions of the Big 10 have played in the Rose Bowl at 5 o'clock on New Year's Day. The Big 8 champion for years hosted the Orange Bowl, while the former Southwestern Conference sent its champion to the Cotton Bowl. These longstanding relationships were part of the great tradition of college football and helped make it such an outstanding spectator sport.

As a matter of fact, I think I agree with Lee Corso. I was at the Alabama-Auburn game 2 years ago in Auburn, and he called it the greatest spectacle he had ever seen in sports and it certainly was that for me, even though my alma mater came up short.

The Bowl Alliance is beginning a new tradition to a very old tradition. Many of these longstanding relationships have been or will be altered so that we have a true national championship game, hopefully each year, with the top two teams each year squaring off in the final game of the season.

In a very real sense, Mr. Chairman, the conferences participating in the Alliance have given up or rearranged their traditional bowl relationships and contracts in order to make this national championship game possible for college football. They have also invited every major football-playing institution to participate in this arrangement and to make themselves available to play in one of these games, if selected.

The bowl system is now more open than it has ever been and the whole purpose of the Alliance is to make it possible for any team to compete for the national championship. Once the Rose Bowl becomes part of the Alliance after the 1998 season, like clockwork we will have a match-up of the top two teams in college football at the end of the year, regardless of conference affiliation. And it was done without governmental law or interference or governmental regulation.

Mr. Chairman, this is a perfect case of supply and demand. The fans have demanded it and now they are getting it. I, for one, am glad that such an arrangement is taking place. It is dismaying, however, that conferences who created this new system and gave up or altered their traditional bowl relationships to make it possible now have to face criticism for that process.

Every year, the NCAA basketball tournament includes 64 teams, and invariably one team or another believes it is deserving of a bid, but did not get one. The same thing might be said about the NFL playoffs. It has been a number years since an AFC team won the Super Bowl, but we have not been bothered to look at why the NFL continues to match an AFC team against an NFC team in the Super Bowl or why the league does not rearrange its conference lineups to produce more evenly matched Super Bowls. And baseball is not exempt either. A few years ago, the San Francisco Giants won 103 baseball games, second most in the major leagues, but didn't make the playoffs. No one has suggested this subcommittee look into that matter.

For the few college bowl games that are part of the Alliance arrangement, establishing a selection procedure and balancing all factors involved in that process is a complex task, to say the least. But I believe that these arrangements that have been developed are fair and will continue to evolve. Certainly, the participating conferences and universities are in the best position to address any issues that will be raised in this hearing.

Mr. Chairman, I appreciate your allowing me to speak and allowing the commissioner of our conference from Birmingham to testify, and I look forward to exploring this issue as we go forward.

Thank you very much.

Senator DEWINE. Senator, thank you very much.

Our first panel consists of four of our distinguished colleagues from the U.S. Senate. Let me start with Senator Bennett, to my left, or in any order you all want to go, actually.

Mitch, if you want to start, it is fine.

Senator BENNETT. I will yield to the seniority of my colleague from Kentucky.

STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Certainly, I would say, Mr. Chairman, seniority on this issue, at least.

Senator DeWine, I want to thank you as chairman of this subcommittee for calling this hearing on the implications of the College Bowl Alliance. As you know, I have been working on this issue for the last 4 years and am very interested in ensuring that the big business of college football is being carried out in compliance with the Sherman Act.

There are a lot of important interests at stake here. Those interests include the fans, 70 percent of whom prefer playoffs over the current bowl structure; the colleges; the game of college football itself; and the 40 percent of Division I–A athletes who are excluded from membership in the Alliance.

I listened with great interest to my good friend, Jeff Sessions, who represents the great State of Alabama in an outstanding way, the State where I was born. My daughter is going to the University of Alabama for graduate school starting in the fall.

But I would say there is another sort of aspiring school in Alabama; that is, the University of Alabama-Birmingham, which is going to be a Division I–A school, and I will bet you the folks at UAB hope that maybe someday they will be able to replace the Crimson Tide or the Auburn Tigers. It seems to me that is largely what the hearing today is about, not those who have already achieved prominence, but those who haven't and might like to be considered, or at least have a chance to compete.

Mr. Chairman, there is substantial evidence that the most powerful conferences and the most powerful bowls have entered into agreements to allocate the post-season bowl market among themselves and to engage in a group boycott of non-Alliance teams and bowls. The effect of these agreements is to ensure that the strong get stronger while the rest get weaker.

My message today is very simple. The opportunity to compete in college football should be based on merit, not membership in an exclusive coalition. A good model might be March Madness, which just finished a month or so ago. In order to fully understand the closed world of college football, we need to step back for a moment and look at exciting and open world of college basketball.

Just a few short weeks ago, the country was swept away with the frenzy of March Madness. I think we all would agree that March Madness is a tremendous success for the NCAA, the colleges, the networks, and the fans. It is clearly one of the most successful and exciting events in all sports. March Madness exemplifies basic fairness and open competition.

Mr. Chairman, in contrast, college football has no place for cinderella stories. There can be no unranked, unknown Coppin State going to the playoffs and beating the SEC regular season champion and then going down to the wire with a Big 12 power. A team like Coppin State could never make it to the lucrative college football post-season because, you see, a team like that would be excluded because it is not in the College Bowl Alliance and its fans, "don't travel well." It doesn't even have its own band.

College football has no room for a Sweet 16 that includes teams like the University of Louisville and the University of Utah. The opportunity to be in college football's Elite Eight and Final Four is essentially determined before the season begins. The basic message, Mr. Chairman, is that if David wants to slay Goliath, he had better do it during basketball season. He won't be allowed to play Goliath when the football post-season rolls around.

College football has no room for the underdog. In fact, as evidenced by the 1997 New Year's bowls, college football doesn't even have room for the top-ranked teams, it has already been referred to several times here today, unless those teams are a member of the exclusive Bowl Alliance.

I ask the members of the subcommittee to imagine the national reaction if, tomorrow, the NCAA decided it was going to get out of the college basketball playoff business and let a few conferences and a few private entities run the basketball post-season. Specifically, the new system would not be a playoff system open to all conferences and all schools, but rather would be genuinely open to only six conferences. The remaining schools and conferences would not be allowed to compete or would be given, at best, only a theoretical chance of competing.

Even worse, imagine further that the NCAA tournament schools would receive $8 million for participating, and the justification for choosing the privileged school would be simply, "hey, they have been successful over the past several years, so they deserve privileged status for the upcoming season," a reward for the past, not a reward based on current performance.

I venture to say that the sports world would go berserk. The colleges, the players, the fans—they would all be absolutely livid. That, Mr. Chairman, would indeed be March Madness. Everyone would be outraged, except, of course, the privileged six conferences and the private entities who host and broadcast the monopolistic games. Mr. Chairman, this wild hypothetical is an all too close approximation of what we have in college football, and it is just plain unfair, not to mention a violation of the antitrust laws.

Obviously, I am not suggesting a football championship with 64 teams and several weeks of playoffs, but I am strongly encouraging the interested parties to develop a championship proposal that does not run afoul of the Sherman Act.

I first raised this antitrust issue in 1993 when my alma mater, the University of Louisville, jumped out to a 7–0 record and a top ranking, but soon realized that it was automatically excluded from the most lucrative New Year's bowls. I contacted the Justice Department and explained that the Alliance agreements constituted a group boycott, and thus violated the Sherman Act.

Shortly thereafter, the College Bowl Alliance entered into a revised agreement whereby the 1997 New Year's bowls would be, "open to any team in the country with a minimum of eight wins or ranked higher than the lowest ranked conference champion." Despite this pledge, the Alliance continued its apparent boycott of non-Alliance teams.

During the 1996 season, as we have previously discussed, Brigham Young University and the University of Wyoming, both members of the non-Alliance Western Athletic Conference, met the Alliance criteria. As has been stated, BYU won 13 games and was ranked fifth best team in the country. Neither BYU nor Wyoming, however, was afforded an opportunity to play in Alliance bowls. In fact, BYU's record and ranking was superior to nearly every Alliance team, including four of the six teams who participated in the high-visibility, high-payout Alliance bowls.

Let me recap. The Alliance established what were supposed to be new rules. BYU and Wyoming played by the new Alliance rules and just as they were about to score, the Alliance moved the goalposts. Mr. Chairman, I have raised this antitrust issue again this year because these facts are so revealing of the Alliance's purpose and effect. BYU was the perfect test case for open competition. The Alliance, plain and simple, failed the test.

This issue is about more than football, apple pie, and alma mater. This is about big money. This is about a few conferences and a few bowls dividing up a huge multimillion-dollar pie among themselves. If you are not in the Alliance, you can't get a piece of the pie.

I have a chart over here to my right that shows the big money guarantees for the Alliance conferences. In 1997, the eight participants in the Alliance bowls, including the Rose Bowl participants, shared an estimated pot of $68 million, while the 28 non-Alliance bowl participants were left to divide approximately $34 million.

As this chart colorfully illustrates, the market has been divided such that eight teams rank in approximately 70 percent of the post-season millions, while 28 teams get nothing more than the leftover 30 percent. You will notice from the chart that the 4 Alliance bowls get the football, while the 14 remaining bowls receive merely the tip of the ball. What is the effect of the Alliance agreements? Well, the already strong Alliance teams get stronger while the non-Alliance teams are relegated to a future of, at best, mediocre, second-class status.

In closing, I would like to point out that this effort is much more than just a few Senators cheering for their home teams. The courts have said it much more clearly than any of us could. In the words of the District of Columbia Circuit, "The hallmark of the [unlawful] 'group boycott' is the effort of competitors to 'barricade themselves from competition at their own level.'"

Today, we continue to call on all interested parties to break the barricade and bring about genuine competition to college football and the post-season. A legitimate post-season championship can be a reality for college football. It works for college basketball, college baseball, and it works for college football at the Division I–AA, Division II, and Division III levels.

Mr. Chairman, thank you for allowing us to be here today and to emphasize one basic point; that is, college football ought to have a level playing field. It should not be the Alliance versus the non-Alliance, the privileged class versus the perpetual underclass.

I end my statement as I began it. The opportunity to compete in the college post-season should be based on merit, not membership in an exclusive coalition. By all means, the opportunity to compete should not be based on which team has more of a winning tradition. That refers to the past. The 1997 bowls should not be based on a school's accomplishments in the 1980's. In other words, post-season competition should not be based on how many trophies you have on the shelf, but rather the quality and quantity of wins you have under your belt in a particular season.

Mr. Chairman, I would also like to recognize Coach Ron Cooper, who will be testifying shortly, the head football coach at the University of Louisville. He is doing a fine job and he is on the front lines of this antitrust issue and we are looking forward to hearing from him later this afternoon.

Thank you very much.

Senator DEWINE. Senator McConnell, thank you very much.

Senator DEWINE. We will now hear from Senator Bennett.

STATEMENT OF HON. ROBERT F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. Thank you, Mr. Chairman. I appreciate the opportunity to be here, and made careful notes during the opening statements and will do my best to respond.

First, in the spirit of full disclosure, I will report that I am not a graduate of Brigham Young University. I am a graduate, and served as student body president, of the University of Utah, BYU's arch rival. If you think it is tough between Harvard and Yale, or USC and UCLA, just show up during the Utah-BYU game.

So why am I here if BYU was the team that was wronged? There is a clear answer to that aside from the fact that, as a Senator, I represent the people who cheer for BYU, and that is that the money issue does not just involve schools; it involves conferences. When a school from a conference goes to one of these bowls, the money that comes from the bowl is divided among the members of the conference, so that even though the University of Utah may not have posted the same record as BYU in the last season, the University of Utah and every other university in the Western Athletic Conference was financially damaged by the refusal of the Bowl Alliance to give BYU a slot in 1996.

Let's put up a chart just so that we can graphically understand what did happen in 1996 with respect to BYU and the promise that was made, to which Senator McConnell referred, that they would be given an opportunity to play in an Alliance bowl.

You see there in red the teams that went to the Fiesta Bowl—Penn State and Texas. They finished, respectively, No. 7 and No. 20. Then you see in yellow the teams that went to the Sugar Bowl. This is the showcase that people like to talk about in terms of determining a national champion—Florida State and Florida, and they finished 1 and 3, respectively. Then, in light orange, the teams that went to the Orange Bowl—Nebraska and Virginia Tech. They finished, respectively, 6th and 10th. Arizona State and Ohio State, by happy coincidence, were the champions of their respective conferences that, under longstanding conference rules, went to the Rose Bowl.

Brigham Young finished ahead of Nebraska, Penn State, Virginia Tech, and Texas, but was not allowed the so-called opportunity for non-Alliance teams to prove themselves and get in an Alliance bowl. They proved themselves and they didn't get in. I'd like to share a quote with respect to the statement that, the BYU team doesn't travel well and it isn't good for the fans to watch a team like BYU. This is from a sportswriter in the Washington Post, not known as a group that always favors BYU—I read this in the Washington Post while this was going on and had my staff dig it out for me.

The sportswriter says, "The Bowl Alliance messed up the assignments." "I don't blame BYU for wanting to file a lawsuit, which the

17

school considered but decided against. You finish 13–1 and in the top five. Somebody ought to find a spot for you in one of these bowl games. The bowl people and the TV execs will tell you all this mumbo-jumbo about BYU not drawing the big TV numbers, but guess what? The BYU-Wyoming WAC championship attracted a bigger TV audience than did Nebraska-Texas and Florida-Alabama. Question"—and I apologize in advance to the Senator from Alabama, but I am quoting—"who would you rather watch any day of the week, Alabama or BYU? BYU is made for TV the way it plays. And how about Wyoming, which was 10–2, but still isn't going anywhere, while 6–5 teams that will put you stone cold asleep are going bowling? That is embarrassing to college football, or ought to be."

Well, as the Senator from Kentucky said, the real issue here is money, not prestige for alma mater or praise for the home school. I will put up my version of the chart that he had before you showing the impact of the money of these bowls, as projected once the Rose Bowl is added to the Alliance.

You get the Alliance bowls—the Fiesta, Sugar, Orange, and Rose—and you get $34 million, times two teams, because obviously there are two in each bowl, and you have $68 million divided among the Alliance conferences. You take the other bowls and add up all the money and you have $17 million, times two teams, and you have $34 million, half as much money, divided up among all of the participants in the other bowls, as opposed to the amount that is divided up among the Alliance bowls.

Well, you say they earned it; they are the best teams in the country, they are the best conferences in the country, they earned the best money in the country. This becomes, if I may, a self-licking ice cream cone. Why are they the best teams in the country? Because they can buy the best coaches and the best facilities, and they have the best farm club effect. We all know that one of the major, major attractions for college football is that it is a farm club for the NFL; it is a farm system for the NFL.

Where will the promising athlete most want to go when he is building his career toward an NFL draft choice? He will want to go where he gets the most exposure. So if you belong to an Alliance conference that is funded in this fashion, you can afford to buy the best coach, you can afford to build the best facilities, and you will automatically attract the best players during recruiting. Then you will turn around and say, yes, but the teams just didn't cut it from the other conferences.

The example that my colleague from Kentucky gave about basketball is exactly correct. It is possible in basketball for someone to break through and come to the attention of NBA scouts at a school that has nothing whatever to do with the major conferences. The Alliance system will make it increasingly impossible for anybody to hope for an NFL career who does not go to a school that belongs to an Alliance conference. The money will flow to the Alliance conferences and, following the money, the coaches, the facilities, and the farm effect will flow to the Alliance conferences, and you will see the antitrust circumstance that Sherman was worried about.

I agree with Senator Kohl that this probably shouldn't be an issue for Congress to deal with. But since I have no other forum in which to deal with it, I am grateful for the opportunity to raise it here. If you look at the long term consequences, the projected payouts, and inflation you begin to realize that we have, in fact, a system that is going to guarantee itself forever and ever. Again, a self-licking ice cream cone, only in this circumstance the ice cream is never going to go away.

The consequences of this go beyond college football because of the fact that college football has become, as I mentioned, a farm system for the NFL. We are talking about one of the largest industries in the country when we are talking about professional football. I think it is improper for our Nation to have one of our largest sporting leagues, set up so that only a few colleges will participate in the farm system and that many players who, for one reason or another, are unable to get into one of those schools in the Alliance will see their opportunity for future earning potential lowered very, very significantly.

With that, Mr. Chairman, I thank you for the opportunity of being here. I want to, along with Senator Hatch, welcome Chad Lewis. I look forward to hearing his firsthand experiences dealing with the Alliance system.

Senator DEWINE. Senator Bennett, thank you very much.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF SENATOR ROBERT F. BENNETT

Mr. Chairman, thank you for holding these hearings and allowing me to take part in a debate that is of great interest to the state of Utah. When most people think about the most recent Football Season and complaints with the Alliance system, they immediately think of Brigham Young University. I must, in the spirit of full disclosure, report that I am not a graduate of Brigham Young University, but of the University of Utah. However, the University of Utah, as well as Utah State University, are also greatly impacted by the questionable practices of the Alliance. The views expressed today will help us explore the detrimental effects of the Alliance agreements on fans, players, and universities.

I am particularly interested in the testimony of Chad Lewis, who has recently graduated from Brigham Young University. Chad exemplifies the spirit which should personify college athletics in America. He has overcome many obstacles during his football career, and will be playing in the NFL this year. In addition, he has earned high grades and served well his community. Unfortunately, even though Chad's team was ranked 5th in the nation, Chad was unable to play in one of the Alliance bowls. He is here to share his first-hand experience with the Alliance system.

College teams should be able to play football based on their performance on the playing field instead of on decisions made in the boardroom. The Alliance has tried to justify its agreements and actions. However, last year's post-season football games, which included the shunning of Brigham Young and Wyoming, has shed light on the fictitious justifications for the Alliance agreements.

First, the Alliance claims that the purpose of the Alliance was to create a national champion. The facts, however, indicate that the purpose of the Alliance is to ensure that the Alliance is in charge of the significant funds that post-season football events generate. As is shown by the various payouts to each bowl, the Alliance has ensured that the vast majority of money stays in the hands of the Alliance members.

Second, the Alliance claims that the Alliance bowls exist to give fans the best possible games. Again, the facts demonstrate otherwise. As last year's bowl lineup demonstrated, the fans are not getting the most exciting matchups. The Alliance system deprives fans of the playoff excitement and enthusiasm that is present in other NCAA sports, and in other NCAA football divisions.

For these reasons, I join this effort here today to see if any applicable anti-trust laws have been broken and to help ensure that a boardroom conspiracy does not siphon off the heavy money to one group at the expense of fans, athletes, and universities.

Senator DEWINE. Senator Thomas.

STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Thank you, Mr. Chairman and members of the committee, for your active interest in this issue regarding the Bowl Alliance, and for giving us, the students we represent, and American college football fans a forum to examine the antitrust implications of the College Football Alliance structure.

We believe the Bowl Alliance is a restrictive monopoly masquerading as a cozy, down-home pastime. Unfortunately, the pawns in the game are the student-athletes. Despite all the money we talk about, it is the student-athletes that really are important in this whole situation.

I think it is appropriate for the Congress to take a look at this. I don't think it is appropriate to legislate, but I think we ought to try and bring the facts out so something can happen. I understand it makes a difference in what State you are from as to how important this matter seems.

The University of Wyoming produced a nationally ranked football in 1996, with a 10–2 record and three players named to the All-American squad. It was an impressive record by any standard. Despite this fortitude, the Cowboy team was not invited to post-season play and is being forced to fight for recognition in a Division I–A college football league that is overrun by the Bowl Alliance.

The College Football Bowl Alliance conferences came together in 1993 and it took it upon themselves to provide and match teams to participate in the major bowl games. It is clear the Bowl Alliance is interested more in money and marketing than rewarding athletic excellence. There is no doubt about it, the conferences are becoming rich.

We may not have had a bowl team, but we do have a chart. You know, in the Senate, it is necessary to have a chart, so we have one entitled "1996 NCAA Division I–A Bowl Game Review." During the season, the Alliance conferences earned a sum of $67.9 million in Sugar, Orange, Fiesta, and Rose Bowl profits. Combined major bowl and minor bowl income for the Alliance was $95.9 million, while the non-Alliance conferences played for $5.4 million in minor league purses. So you see a substantial difference.

We believe, of course, the four of us here, that the Alliance conferences and the bowls have entered into some restrictive agreements to allocate post season bowling, and that is what we are here about. The Alliance continues to claim they are driven by market demand in delivering a product for which sports fans are clamoring. I question the accuracy of that assertion.

Everyone is interested in seeing a national championship game, but it is clear that college sports fans are not impressed with the entire product line of the Bowl Alliance. Sports fans were given a chance to speak during a public opinion poll that was conducted by the Gallup group in the fall of 1996 commissioned by the College Football Association. Seventy percent identifying themselves as college football fans preferred the playoff system, to 22 percent who preferred the bowl system.

It is unfortunate that the NCAA governance structure has turned a blind eye to the abuses that are occurring. The NCAA was created to take on the complex problems before us. Clearly, they have been absent on this bowl issue. We cannot lose sight of the purpose and the value of intercollegiate athletics. College sports are supposed to allow student-athletes to realize their personal potential by teaching them about leadership, competition, practice, teamwork, group loyalty, and sportsmanship. This past season, the Bowl Alliance sent a message out to the students: it doesn't matter if you win or lose as long as you are a member of an Alliance conference.

We are going to hear testimony this afternoon from Richard Peace, a senior on the 1996–97 football team at Wyoming, and Dave Baker, special assistant to the University of Wyoming president. Both of them have been staunch and steadfast on this issue and I am proud to have them representing Wyoming.

There is a growing momentum for change. I am hopeful that our efforts here will help bring that about. I too hope that change is not forced in the courts, or in legislation, but by those people who are involved.

Thank you, Mr. Chairman.

Senator DeWine. Thank you very much, Senator Thomas.

[The prepared statement of Senator Thomas follows:]

Prepared Statement of Senator Craig Thomas

Good afternoon. I thank the distinguished Chairman of the Subcommittee on Antitrust, Senator Mike DeWine, for his active interest in the issue of the college football Bowl Alliance. He has given us, the students we represent and American college football fans a forum to examine the antitrust implications of the college football Bowl Alliance structure. The Bowl Alliance is a restrictive monopoly masquerading as a cozy, down-home past-time. Unfortunately, the pawns in this elaborate ruse are the student-athletes.

The University of Wyoming is a school of 11,000 students in a state of 480,000 residents. The Cowboy football team is a source of pride and inspiration to our sparsely populated state. On the day of any given home game, the Town of Laramie, population 22,000, doubles in size as the people of our state travel long and far to cheer on the Cowboys in War Memorial Stadium.

The University of Wyoming produced a nationally ranked football team during the 1996 season with a 10–2 record and three players named to the All-American squad. It was an impressive record by any standard. Despite this fortitude on the field, the Cowboy football team was not invited to post season play and is being forced to fight for recognition in a division I–A college football league that has been overrun by the Bowl Alliance.

The college football Bowl Alliance conferences came together in 1993 and took it upon themselves to provide and match teams to participate in the major bowl games. It is clear that the Bowl Alliance is more interested in money and marketing than rewarding athletic excellence and providing high-quality match-ups between teams. In 1996, invitations to the most lucrative major Bowl bids—the Orange Bowl, the Sugar Bowl and the Fiesta Bowl—were sent to high-profile, highly marketable teams instead of lower profile, yet equally worthy teams. Matters have risen to outrageous proportions as illustrated by the 1996 picks to the major bowl games.

Fresh in the minds of Wyoming football fans is the last game of regular season play when the #22 ranked Cowboys played against #5 ranked Brigham Young University for the 1996 Western Athletic Conference (WAC) championship title. Both teams went into the game believing the winner would be selected for a bid in the Fiesta Bowl. UW and BYU delivered a terrific conference championship game. BYU beat Wyoming in overtime play. Neither WAC team was invited to a major New Year's bowl.

When BYU was not invited to the Fiesta Bowl, it didn't just hurt the Cougars, it hurt the entire WAC conference. Because the WAC has a revenue-sharing agreement, the fifteen WAC conference members would have divided up $7 million of the $8 million Fiesta Bowl pay-off to BYU. Instead, the WAC received about $1.1 million of the $2 million payment the Cougars got for playing Kansas State in the Cotton Bowl. Not only was money lost, but national visibility and prestige that leads to strong recruitment were foregone as well.

There is no doubt about it. The Alliance conferences are becoming rich. Consider the figures in the chart entitled, "1996 NCAA Division I–A Bowl Game Review." During the 1996 season, the Alliance conferences earned a sum of $67,916,000 in Sugar, Orange, Fiesta and Rose Bowl profits. The combined major bowl and minor bowl income for the Alliance conferences was $95,916,000 while the non-Alliance conferences played for $5,400,000 in minor bowl purses.

It is plain to see that two tiers have been created within division I–A college football. The Alliance conferences have squirreled away for themselves access to the high-paying bowls and television contracts. They can only become stronger and stronger in their upward spiral. With a second-tier status, the non-Alliance conferences will play in a decreasing number of low-paying bowls. It is not unthinkable that they could one day be forced to merge, shrink or become defunct. These developments in college football cannot go unchallenged.

Senator Mitch McConnell, Senator Bob Bennett, Senator Mike Enzi and I believe the Alliance conferences and bowls have entered into restrictive agreements to allocate the post-season bowl market among themselves. They are engaging in a group boycott of non-Alliance teams. This has caused a restraint of trade as non-Alliance conferences are systematically locked out of the ability to supply teams for the high-paying bowls.

The Alliance ensures its monopoly through the use of an at-large rule. Although the champions of the self-selected Alliance Bowl conferences automatically appear in one of the major bowl games, they guarantee two remaining at-large spots. It is questionable as to whether those two spots are truly at-large. Clearly BYU was deserving of one of those at-large spots, but BYU was shrugged off and told to step aside because its performance in 1996 was aberrational.

The Alliance conferences continue to claim that they are driven by market demand and are delivering a product for which sports fans are clamoring. I question the accuracy of that assertion. Everyone is interested in seeing a national championship game, but it is clear that college sports fans are not impressed with the entire product line the Bowl Alliance is offering. Sports fans were given a chance to speak during a pubic opinion poll that was conducted by the Gallup organization in the fall of 1996 and commissioned by the College Football Association. Seventy percent of those identifying themselves as college football fans prefer the playoff system to the twenty-two percent who prefer the bowl structure.

It is unfortunate that the NCAA governance structure has turned a blind eye to the abuses that are occurring. The NCAA was created to take on the complex problems we have before us. Clearly, the NCAA has been absent on the Bowl Alliance issue. In the absence of proper-oversight, Congress has been forced to step onto the college grid-iron and demand that all schools be treated equitably.

We cannot lose sight of the purpose and value of intercollegiate athletics. College sports are supposed to allow our students-athletes to realize their personal potential by teaching them about leadership, competition, practice, teamwork, group loyalty and sportsmanship. This past season, the Bowl Alliance sent a message out to our students: "It doesn't matter if you win or lose as long as you are a member of an Alliance conference." The Bowl Alliance system is not enriching student athletics.

We are going to hear testimony this afternoon from Richard Peace, a senior on the 1996–1997 UW football team, and Dave Baker, Special Assistant to the University of Wyoming President. Both of them have been staunch and steadfast on this issue. I am proud that they have come to the hearing to represent the University of Wyoming.

There is a growing momentum for changes to the current system. I am hopeful that a more open and equitable system will be the fruits of our efforts. The Bowl Alliance is in the last quarter with fourth and long. I suggest they punt rather than risk further damage to the integrity of college football.

1966 NCAA Division I–A Bowl Game Review

[Alliance Conferences]

	ACC	Big East	Big 12	SEC	Pacific 10	Big 10	Total
No. of Teams	9	8	12	12	10	11	62
TV Package	Raycom ESPN	Creative Sports ESPN/ABC	Liberty Fox ESPN/ABC	Jefferson Pilot CBS/ESPN	Liberty Fox ESPN/ABC	Creative Sports ESPN/ABC	
1996 Alliance Bowl Appearances	Sugar	Orange	Fiesta Orange	Sugar	Rose	Rose Fiesta	
Alliance Bowl Income	$8,736,000	$8,484,000	$16,972,000	$8,736,000	$8,250,000	$16,736,000	$67,916,000
Minor Bowl Income	$3,550,000	$3,050,000	$4,400,000	$6,600,000	$3,150,000	$7,250,000	$28,000,000

[Non-Alliance Conferences]

	Big West	Conference USA	WAC	Mid-American	Independent Teams*	Total
No. of Teams	6	6	16	10	11	38
TV Package	Independents	Sports Channel FOX	ESPN/ABC	Sports Channel FOX		
1996 Alliance Bowl Appearances						
Alliance Bowl Income	$0	$0	$0	$0	$0	$0
Minor Bowl Income	$150,000	$800,000	$2,750,000	$150,000	$1,550,000	$5,400,000

*Excludes Notre Dame

Senator DEWINE. Senator Enzi.

STATEMENT OF HON. MICHAEL ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator ENZI. Mr. Chairman, ranking member, chairman of the full committee, and fellow freshman Senator, it is a pleasure to be here today. We really appreciate this opportunity to come before you and discuss the antitrust problems that are associated with the current College Bowl Alliance.

The current Alliance, whether true or not, gives the perception that they have stifled genuine competition and placed college football at the mercy of a coalition that appears to be more interested in money and power than in the best interests of the players or the fans or the colleges that they profess to represent.

As has been mentioned, you will get the opportunity to hear from one of the players from the University of Wyoming, Richard Peace, who is an outstanding wide receiver. He was a member of the 1996–97 Cowboy team that was denied the opportunity to play in any bowl, and I hope you will consider his testimony carefully as he talks about the impact these anticompetitive agreements have on college football players themselves.

We have heard about Brigham Young University and their outstanding record. You have heard a little bit about the University of Wyoming and their outstanding record. This team had some talent that has been unmatched in years. But despite those excellent credentials, the University of Wyoming didn't get a bid to play in any of the Alliance bowls or any other college bowl. In fact, there used to be an agreement by which WAC teams received bids to at least two bowl games.

This year, because of all of the realignments and the approval that those alliances have now been given, and despite having one of the best seasons ever, the University of Wyoming wasn't asked to play in any post-season bowl game, and that came as a great disappointment to Cowboy football fans nationwide who felt the Cowboys had earned a bowl bid through their superior play during the regular season and the TV ratings that they received in the games in which they played.

Simply put, the Alliance is bad for football, since, as a practical matter, it prohibits teams outside the Alliance from playing in the top bowl games, even though we say that the top teams do get to play. The games being played on the field are now taking a back seat to the games being played by the Alliance behind closed doors, closed to the players and closed to the fans. This has resulted in Alliance teams that have an institutional advantage in both bowl receipts and future recruiting.

We have mentioned the $68 million for teams who play in the Alliance bowls. We have mentioned how little the rest of them get. In the Western Athletic Conference, that does get interpreted into dollars per team because it gets split up so that one team in the conference doesn't get a huge advantage over the others even though they have a good team in that particular year.

I want to tell you that this alliance method made a difference to each school in the WAC of $500,000 this year. That disparity is not good business. It results in a built-in advantage for the Alliance teams in areas of future recruiting, program, facilities, and advertising. The Alliance agreement provides unlawful economic protection for its members, with a detriment to college football generally.

While the Bowl Alliance has tried to justify their anticompetitive agreements by claiming they have created a system in which the best teams in college football play each other in the post-season, that is not truth in advertising. We should be worried about that aspect of the Alliance after we look at the antitrust.

Who says that the teams which play in the Alliance bowls are the top eight teams in the Nation? We are purporting that they are the top eight teams in the Nation, regardless of the other evidence that is here. The Alliance cannot honestly claim it has created a true college playoff when the 5th ranked team in the Nation is passed over for a bid to the Alliance bowls in favor of less competitive teams with worse records and lower national rankings. This Alliance more closely resembles a payoff system than a playoff system. The current Alliance structure does not do justice to the players, the colleges, the fans, who are all true beneficiaries of college football.

The Alliance's market allocation agreements have hurt consumers, as well. One poll has shown that college football fans would have preferred to see several non-Alliance teams, including Brigham Young and the University of Colorado, in top bowl games. These agreements amounted to changing the rules in the last 2 minutes of the fourth quarter. They are precisely the type of market allocation agreements the Sherman Act was passed to prohibit.

Finally, the Bowl Alliance has hurt the very game it claims to have been formed to protect and preserve—college football. By fencing out certain conferences and schools, the Alliance has turned a blind eye to the time-honored institution of amateur athletics. College athletes should be allowed to pit their skill, their discipline, their determination against that of their peers in the best-known bowl games.

Under the current Alliance structure, many college athletes are prohibited from playing in the bowl games, for reasons that are totally unrelated to their ability or their success on the football field. The wreaths of college athletics should be awarded to the finest teams and players based on their talents and their abilities, as shown on the field of play. Their dreams of a bowl game appearance and the future of athletes should not be bought and sold under the bleachers before the season even begins.

I look forward to working with you on whatever steps you find might be necessary to overcome these inequities.

[The prepared statement of Senator Enzi follows:]

PREPARED STATEMENT OF SENATOR MICHAEL ENZI

Mr. Chairman, ranking member and distinguished committee members, thank you for providing me with this opportunity to come before you to discuss the antitrust problems associated with the current College Bowl Alliance. The current Alliance structure has stifled genuine competition and placed college football at the mercy of a coalition more interested in money and power than the best interests of the players or the fans or the colleges they profess to represent.

This afternoon we will hear from a player who was adversely affected by the College Bowl Alliance. Richard Peace was an outstanding wide receiver for the University of Wyoming Cowboys. He was a member of the 1996–97 Cowboy team that was denied the opportunity to play in any bowl game. I urge you to consider his testimony carefully as it reveals the impact these anti-competitive agreements have on the college football players themselves.

Just this last January, two of the top twenty-five ranked football teams in the country fell victim to this anti-competitive College Bowl Alliance. Brigham Young University, a member of the non-Alliance Western Athletic Conference, finished the year with a remarkable 13–1 record and was ranked fifth in the nation. Another member of the WAC, the University of Wyoming, finished its regular season with a formidable 10–2 record and a national ranking of twenty second. Despite those excellent credentials, the University of Wyoming did not receive a bid to play in any of the Alliance bowls. In fact, despite having one of its best seasons ever, the University of Wyoming was not asked to play in any post-season bowl game. This came as a great disappointment to Cowboy fans and football fans nationwide who felt that the Cowboys had earned a bowl bid through their superior play during the regular season.

Simply put, the Alliance is bad for football since as a practical matter, it prohibits teams outside the Alliance from playing in the top bowl games. The games being played on the field are now taking a back seat to the games being played by the Alliance behind doors closed to the players and the fans. This has resulted in Alliance teams having an institutional advantage in both bowl receipts and future recruiting prospects. In 1996, the eight Alliance bowl participants, including the teams playing in the Rose Bowl, split a total of $68 million. More specifically though, the differences in revenue to EACH Western Athletic Conference team only counting the loss in revenue from Brigham Young University's lack of an invitation to an Alliance Bowl game, in spite of their outstanding record, amounted to a loss of almost ½ million dollars per school! This disparity is not good business. It results in a built-in advantage for Alliance teams in the areas of future recruiting and program development. The Alliance agreement provides unlawful economic protection for its members to the detriment of college football generally.

The Bowl Alliance has justified their anti-competitive agreements by claiming they have created a system by which the best teams in college football play each other in post-season bowls. This is not truth in advertising. The Alliance cannot honestly claim it has created a true college playoff system when the fifth ranked team in the nation is passed over for a bid in an Alliance Bowl in favor of less competitive teams with worse records and lower national rankings. This Alliance more closely resembles a payoff system than a playoff system. The current Alliance structure does not do justice to the players, colleges, and fans who are the true beneficiaries of college football.

The Alliance's market allocation agreements have hurt consumers as well. One poll has shown that college football fans would have preferred to see several non-Alliance teams, including Brigham Young University and the University of Colorado, in the top bowl games. These agreements amounted to changing the rules with two minutes left in the fourth quarter. These are precisely the type of market allocation agreements the Sherman Act was passed to prohibit.

Finally, the bowl alliance has hurt the very game it claims to have been formed to protect and preserve—college football. By fencing out certain conferences and schools, the Alliance has turned a blind eye to the time-honored institution of amateur athletics. College athletes should be allowed to pit their skill, discipline, and determination against that of their peers in the best post-season bowl games. Under the current Alliance structure, many college athletes are prohibited from playing in bowl games for reasons that are totally unrelated to their success on the football field.

The wreaths of college athletics should be awarded to the finest teams and players based on their talents and abilities as shown on the field of play. Their dreams of a bowl game appearance and their future as athletes should not be bought and sold under the bleachers before the season even begins. I look forward to working with you in taking whatever steps are necessary to correct this inequity in college athletics.

Senator DEWINE. Well, we appreciate the testimony of all of you. Senator Kohl, any questions?

Senator KOHL. No questions.

Senator DEWINE. Senator Hatch.

Senator HATCH. No, thanks.

Senator DEWINE. Senator Sessions.

Senator SESSIONS. My only question would be do you think that the process of breaking up the contracts between the bowls and the conferences is a step forward? Does anybody want to comment on that?

Senator McCONNELL. I am not quite sure how I would answer that, Senator Sessions, other than to say that it seems to me if you still have a system in place under which 40 percent of the Division I–A athletes in America cannot become the best, then you haven't solved the problem. I think the Alliance may well have produced more frequently a game for the national championship, but if you look below that at all the rest, it seems to me it has been a failure and it has certainly excluded 40 percent of the young men who play this game at Division I–A level from the opportunity to be the best.

Senator THOMAS. I suppose, Senator, you have to review the purpose of the exercise. What is it that you seek to have playoffs for? If the playoffs are simply a commercial exercise, then that is one thing. If they are an opportunity for student-athletes to, based on their performance, play against their peers, then I think you have to go back and review whether this system provides that or not. If it doesn't, perhaps it needs to be changed.

Senator DEWINE. Senator McConnell, let me follow up, if I could, with that question of Senator Sessions. You have stated that 40 percent of the athletes are excluded. Now, the Alliance, of course, would respond to that by saying that is what you have the two at-large berths for, that the two at-large berths can come from any Division I team.

Senator McCONNELL. Well, the only opportunity they have had to prove that was this past season, and as we have all repeated, Brigham Young was in the top six, ranked No. 5. Four of the six teams that participated were ranked lower. So the one opportunity they had to prove that the Alliance really was open to a non-Alliance team, they didn't provide that opportunity.

Senator DEWINE. Senator Bennett, I wonder if you could enlighten us in regard to—I wrote this down. You said it has been alleged, I guess, that BYU is a team that doesn't travel well. What does that mean?

Senator BENNETT. I will be very blunt. The assumption is, and may well be true, that BYU fans do not drink and party to the degree that a host city might prefer traveling fans to do. The coach of BYU has been quoted as saying, "Our fans come to town with a $50 bill in their pocket and the Ten Commandments, and they leave without having broken either one." [Laughter.]

I think that may be a little bit of an overstatement, but that is the image that BYU has. BYU fans generally have the image of not being a hard-drinking bunch, and host cities want visiting fans to be a partying crowd.

Having said that, I will report—and this is all anecdotal, but I will report that on one occasion BYU was invited to one of the lesser bowls, rather than the University of Utah. The reason was that while BYU fans might not travel well, there were more of them living in the host city than Utah fans living in the host city and the host city would have no problem selling out all the tickets. That certainly has been a pattern. BYU usually has no problem selling tickets. But it is the restaurants and the bars and the night spots in the host city that have lodged the complaint, either properly or improperly, about BYU not traveling well.

Senator DEWINE. Thank you for enlightening us as to what that means.

Senator HATCH. Don't worry. Wyoming will make up for BYU. [Laughter.]

Senator THOMAS. I was going to say we sometimes are penalized, perhaps, by numbers, but not by paying customers.

Senator DEWINE. We thank all of you very much.

Senator HATCH. They were both great teams last year. Congratulations.

Senator DEWINE. Let me ask our second panel to come up, if you could begin to come up and I will begin the introductions. We have six members of this panel.

Ron Cooper is the head football coach at the University of Louisville. He is one of the youngest head coaches at a Division I school. Prior to his time at Louisville, Coach Cooper was the head coach at Eastern Michigan. He served two seasons as assistant head coach and secondary coach at Notre Dame.

Wally Richardson is the senior quarterback for Penn State University. This year, he has been named a National Football Foundation and Hall of Fame Scholar Athlete. Wally has been drafted by the Baltimore Ravens, formerly the Browns, of the NFL.

Richard Peace was the starting wide receiver for the University of Wyoming for the last two seasons, and is also the president of the Student-Athlete Advisory Committee. He has tried out for the Canadian Football League and is considering free agency in the NFL.

Roy Kramer has been the commissioner of the Southeastern Conference since 1990. During his tenure, the SEC has earned four national titles and six national runner-up finishes.

Karl Benson is in his third year as the Western Athletic Conference commissioner. Prior to this, Mr. Benson worked for the NCAA, and also served 4 years as the commissioner of the Mid-American Conference.

Cedric Dempsey has been the executive director of the NCAA since 1994. He oversees the Association's national office and provides leadership for the more than 1,200 colleges, universities, conferences, and affiliated organizations that comprise the organization.

Mr. Cooper, we will start with you. You will lead off.

PANEL CONSISTING OF RON COOPER, HEAD FOOTBALL COACH, UNIVERSITY OF LOUISVILLE, LOUISVILLE, KY; WALLY RICHARDSON, FOOTBALL PLAYER, PENNSYLVANIA STATE UNIVERSITY, STATE COLLEGE, PA; RICHARD PEACE, FOOTBALL PLAYER, UNIVERSITY OF WYOMING, LARAMIE, WY; ROY KRAMER, COMMISSIONER, SOUTHEASTERN CONFERENCE, BIRMINGHAM, AL; KARL BENSON, COMMISSIONER, WESTERN ATHLETIC CONFERENCE, ENGLEWOOD, CO; AND CEDRIC W. DEMPSEY, EXECUTIVE DIRECTOR, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, OVERLAND PARK, KS

STATEMENT OF RON COOPER

Mr. COOPER. OK, thank you. I tell you what, this is tense in here. As a football coach, we tell the guys that it is a little bit tight before the game. We didn't get too much a pre-game speech, but I appreciate the opportunity to be here.

Let me just start off with saying that, you know, I am going to talk to you from a football coach's standpoint, and I don't mean to take anything away from any of my fellow coaches around the Nation, any of the commissioners of the different conferences or anything like that, but I have coached almost at every level. I started off at Austin Peay and Murray State and Appalachian State, the I–AA schools, and then moved up to Division I. I have coached in the Big 10 at Minnesota, and coached at East Carolina University and UNLV, and I have coached at Notre Dame. I have been at the bottom at an Austin Peay to where you didn't have a budget to do anything, and I have been at the top to where most coaches would say if you had an opportunity to be an assistant coach, you would want to coach at the University of Notre Dame.

I then moved on and became a head coach at Eastern Michigan, which is a Division I–A conference, and I am now the head football coach at the University of Louisville. At Louisville, we are in what I think is a very, very unique situation. In 1991, the University of Louisville was able to have a great season. They won 10 football games. They played in the Fiesta Bowl. They beat the University of Alabama. By the way, I am from Alabama, also, but they beat the University of Alabama in the Fiesta Bowl. I think the score was 34–7.

Two years after that, in 1993, the University of Louisville was 7–1, had just beaten Arizona State and Texas back to back, was ranked 13th in the Nation, and was forced to sign a bowl agreement with one of the bowls that wasn't considered a top-tier bowl. Why? Because of the coalition back then.

Now, there is something called the Alliance. There are only a certain amount of conferences that can get in, and I truly believe that is unfair. It hurts every school in our conference financially, but as a football coach it hurts us in recruiting. I have got to go and sit in homes just like Joe Paterno and just like all the other coaches, and it hurts us in recruiting.

As I have said before, I have been at every level. I have coached those great athletes at Notre Dame. I have coached those guys that didn't run so fast at Austin Peay. I think that with the reduction in scholarships now, all the different schools are getting closer in

Division I. I don't think there is any difference between the schools in Conference USA as to the Big 10, the SEC, the Pac–10 and schools like that that are a part of the Alliance.

The schools in Conference USA are the University of Louisville, Cincinnati, East Carolina, Memphis, Houston, Tulane, Southern Mississippi, and in 1998 the U.S. Military Academy, Army, will join our conference. Every school in our conference is committed to playing the best non-conference schedule that we can play. We are only mandated top play six conference games, which means we can take our non-conference schedule and we can play all the other major conferences.

In 1966, Louisville beat SEC Kentucky and Big 10 Michigan. Southern Miss beat the University of Georgia in the opener. Memphis beat the University of Tennessee and Big 12 Missouri. East Carolina beat SEC South Carolina, ACC North Carolina State, and Big East Miami on national TV. Houston beat Big East Pittsburgh. Cincinnati, a team in our conference, also beat the University of Kentucky.

In the 1997 upcoming season, the Conference USA teams will play Alliance schools such as Alabama, Mississippi State, West Virginia, Michigan State, Minnesota, Syracuse, Boston College, UCLA, Tennessee, North Carolina State, Illinois, Penn State, Oklahoma, and defending national champion Florida. There is no reason why our conference, Conference USA, should not be considered equal with any of these conferences around the country.

At the University of Louisville, I plan on coaching a team 1 day that is going to go 11–0. This year, if we were to happen to go 11–0, I will have to beat Kentucky on the road, Penn State at Louisville, Illinois at Louisville, Oklahoma on the road, and then we play Utah at our place, along with the Conference USA schedule. If we are 11–0, there is no guarantee that Louisville can play in an Alliance bowl.

A lot of times, we say the experts—I heard somebody say that the power or the conference isn't strong enough. The people who are experts to me are the coaches. You ask the coaches around the country about the schools in Conference USA. The coaches—Phil Fulmer will tell you at Tennessee, Memphis is a good school, Memphis is a good football program. I think you can ask Brad Scott at South Carolina and I think you can ask Butch Davis at Miami about East Carolina. I think you can ask Michigan State's coach, Nick Sabin, and Joe Paterno—we played Penn State—about the University of Louisville. Ask the young men right next to me. There isn't that big of a difference.

It is unfair to our players, it is unfair to our fans, and those who say that our conference isn't strong enough, examine our non-conference opponents compared to the other opponents who some of the privileged conference teams are playing. The final rating this year, including East Carolina with Conference USA, who joined our conference this year, ranks Conference USA ahead of the ACC, the Big East, the WAC, the Mid-America, and the Big West.

This year, Conference USA teams will play eight games versus the SEC, six games versus the Big 10, four games versus the Big East, two versus the ACC, two versus the Big 12, and two versus the Pac–10. I truly believe that there is no reason why our conference shouldn't be considered as strong as any other conference in the Nation, and we deserve a chance to be a part of the Alliance and all we are asking for is an opportunity.

As a football coach, the opportunity is what is important. Let me put my 11 on the field and if we win the games and we perform—the team who wins the games deserves a chance to play in the top-rated bowls at the end of the season. Case closed.

Thank you.

Senator DEWINE. Mr. Cooper, thank you very much.

[The prepared statement of Mr. Cooper follows:]

PREPARED STATEMENT OF RON COOPER

As the Head Football Coach of the University of Louisville, I represent 100 student-athletes on my football team and indirectly the male and female student-athletes from Conference USA institutions that field Division I–A football teams, including the United States Military Academy (Army), the University of Cincinnati, the University of Memphis, the University of Southern Mississippi, the University of Louisville, the University of Houston, East Carolina University and Tulane University. I would like to stress two points as they relate to the football program at the University of Louisville and Conference USA assuming that the bowls will continue to be the format used for post-season Division I–A football.

1. GUARANTEED ACCESS TO BOWL GAMES

Post-season competition should allow the opportunity for all I–A Conferences to participate at every level of the bowl system based upon team performance.

(A) Window of Opportunity

The University of Louisville and Conference USA seek access to the Alliance Bowls based on performance on the playing field against quality opponents by means of a guaranteed conference tie-in, or some other form of reasonable access, without an automatic tie-in, or some other form of reasonable access. Conference USA teams may be denied the opportunity to play for the national championship. My coaches, players and all of our fans and alumni who support our team have a shared vision and dream of winning this championship. We also dream of having the opportunity, through competition, to earn the rewards of participating in the top-tier games. Bowl arrangements that prevent this opportunity are unfair.

Louisville's 1997 schedule includes opponents from many of the "privileged" conferences in Division I–A football; Kentucky (SEC), Illinois and Penn State (Big Ten) and Oklahoma (Big 12) along with a very competitive Conference USA schedule. At the end of the season if the University of Louisville is undefeated at 11–0 and if we have won the Conference USA Championship we would be proud to represent the Conference USA in the St. Jude Liberty Bowl, but at the same time we want the opportunity to access the national championship and that requires access through the Alliance.

(B) Financial Rewards

In addition to its highly valued commitment to the St. Jude Liberty Bowl, Conference USA teams should have the opportunity for each athletic department to maximize its financial return associated with Alliance access. To deny access impacts every student-athlete, man or woman, at each of these institutions. It also has a negative impact on all areas of the football program as well as the entire athletic department. We could be disadvantaged in attracting the top caliber student-athletes to our football program which then results in a decline in fan interest, loss of ticket revenues, television opportunities, parking, concessions, royalty incomes and a decrease in fund-raising opportunities.

Our athletic programs at U of L are mandated to operate on a self-sufficient basis. We currently have a $70 million football stadium under construction which gives us the potential through new football revenues to continue to provide scholarships and support services and to meet gender equity requirements in the future. If we cannot earn access to the Alliance Bowls we may not be able to continue to support our athletic programs at its present level.

During the 1996 football season, East Carolina University defeated Big East Conference member the University of Miami 31–6. Both teams finished their season with a 8–3 record. The University of Miami went to the Carquest Bowl because of the Big East Conference tie-ins. Despite its 8–3 record and a convincing win over

31

Miami, East Carolina University was not invited to participated in a bowl game, nor was the University of Southern Mississippi with an identical 8–3 record.

(C) C–USA is a Major Athletic Conference

Conference USA has quickly established itself among the major athletic conferences in the nation (see attached Quick Facts). It has also made a commitment to schedule the highest level of national competition available. During the 1997 season alone. C–USA teams will play Alliance schools such as Alabama! Mississippi State, West Virginia, Michigan State. Syracuse, Boston College, UCLA, Tennessee, North Carolina State, Illinois. Penn State, Oklahoma and defending national champion Florida.

There is no reason that this league should not be considered equal with any other conference in the nation.

Here is a partial list of Conference USA's non-conference football games this season.

August 28

Tulsa at Cincinnati

August 30

Houston at Alabama
Louisville at Kentucky
Memphis at Mississippi State
Southern Miss at Florida

September 6

East Carolina at West Virginia
California at Houston
Utah at Louisville
Southern Miss at Illinois

September 13

Wake Forest at East Carolina
Pittsburgh at Houston
Illinois at Louisville
Memphis at Michigan State
Rice at Temple

September 20

Kansas at Cincinnati
South Carolina at East Carolina
Penn State at Louisville
Minnesota at Memphis
Tulane at Syracuse

September 27

Cincinnati at Boston College
Houston at Minnesota
Louisville at Oklahoma
Southern Miss at Alabama

October 4

East Carolina at Syracuse
Houston at UCLA

November 8

Southern Miss. At Tennessee

November 15

Mississippi at Tulane

November 22

East Carolina at North Carolina State

C–USA vs. the Conferences

8 games vs. SEC
6 games vs. Big Ten
4 games vs. Big East
3 games vs. WAC
2 games vs. ACC
2 games vs. Big 12

2 games vs. Pac-10

2. STRENGTHEN THE ENTIRE BOWL SYSTEM

Most of the publicity surrounding the Alliance has centered on antitrust and access issues. I want to highlight another problem which is the issue of access to bowls at all levels for Conference USA necessary to rectify the kind of injustice that occurred last year when the University of Southern Mississippi and East Carolina University were both 8–3 and did not go to a bowl. As we examine the bowl system it is important to strengthen all the bowls, not just the Alliance Bowls, to provide a system of access that rewards the deserving players with the opportunity to compete in major post-season football competition. The Alliance can help strengthen the bowl system from top to bottom resulting in quality regional bowl match-ups, greater bowl payouts and more equitable access for teams from Conference USA.

The current system is creating a steadily increasing financial gap between bowls. Several bowl games pay participants in excess of $8 million while some bowl games pay less than $1 million per team. The top to bottom strengthening of bowls including some distribution of money will serve to enhance a larger number of intercollegiate athletic programs and, thus, help enhance the opportunities and experiences for thousands of male and female student-athletes.

Below is a chart depicting the conferences and their guaranteed bowl tie ins:

Conference	Number of Guaranteed Bowls
Big 12	Alliance and 5 bowls
SEC	Alliance and 4 bowls
Big 10	Alliance and 4 bowls
Pac 10	Alliance and 3 bowls
ACC	Alliance and 3 bowls
Big East	Alliance and 3 bowls
WAC	3 bowls
Conference USA	1 bowl

CONCLUSION

Thank you for inviting me and for the opportunity to discuss the University of Louisville, Conference USA and the future of Division I–A post-season football. I am confident that if we work together we can make the bowl system work for all of us.

Senator DEWINE. Mr. Richardson.

STATEMENT OF WALLY RICHARDSON

Mr. RICHARDSON. Thank you, Mr. Chairman and members of the subcommittee. Good afternoon. My name is Wally Richardson and I am a December graduate of Penn State University with a bachelor's degree in administration of justice.

I grew up in Sumter, SC, where I was the quarterback at Sumter High School. I entered Penn State in September 1992 on an athletic scholarship. I selected Penn State from among several universities that had an interest in me because I wanted the chance to play on a national championship football team. I was aware that Coach Joe Paterno had coached two teams that won national championships and several others that were considered worthy of the No. 1 ranking. I also knew that Penn State offered me the opportunity for a quality academic experience, which was important to me and my family.

After getting into several games as a freshman, I took a red shirt season as a sophomore, then played 3 years, the last two as the starting quarterback. My athletic experience included trips to five different bowl games—the Blockbuster Bowl in 1993, the Citrus Bowl in 1994, the Rose Bowl in 1995, the Outback Bowl in 1996, and the Fiesta Bowl this past January 1. I enjoyed each of my bowl experiences and always considered a post-season invitation as a reward for the hard work my teammates and I devoted to achieving the kind of record that made us attractive to the bowl representatives.

I never had the opportunity to play for a national championship, although in 1994 I was a member of a team that finished undefeated, won the Big 10 Conference title, and defeated the Pacific 10 Conference champion, Oregon, in the Rose Bowl. The national polls awarded the championship to a Nebraska team that also finished the season without a loss and beat Miami in the Orange Bowl. We never had the chance to play Nebraska because of the Big 10's tie to the Rose Bowl and the Big 8's obligation to the Orange Bowl. There was no way for No. 1 to play No. 2.

As someone who has felt firsthand the disappointment of being good enough, but not having the chance to settle the issue on the field where it should be settled, I consider the College Football Bowl Alliance a step in the right direction. Had such a system been in place in 1995 and the Big 10 been a participant, as it will be in 1999, Penn State and Nebraska would have met in a championship game and the matter of who was No. 1 would have been resolved once and for all.

The Bowl Alliance isn't perfect, but I consider it the best alternative to a playoff system. I think if you poll most college football players, they will favor some sort of playoff. It doesn't appear, though, that a playoff is on the immediate horizon, making the Bowl Alliance our best hope for a one-versus-two game.

I have been asked how it would feel to be in the shoes of a Brigham Young or Wyoming football player following the 1996 season. I was in a similar position in 1994, so I know the feeling. We don't always get what we believe we are entitled to because life isn't always fair. That is a hard lesson to learn, but a valuable one, in football or in a profession.

Penn State got to an Alliance bowl last year and Brigham Young did not. I felt strongly that our team was worthy of playing in the Alliance and would have been very disappointed had we been passed over. My teammates and I worked hard all year, losing only twice in a dozen regular season games against a rugged Big 10 schedule, and we deserved a place.

There presently is no perfect system for picking the No. 1 college football team in America. The national polls certainly aren't an ideal method. Without a true playoff, I think the Bowl Alliance is the best answer available to us.

Thank you for providing me with an opportunity to share my opinions and for your consideration of the feelings of student-athletes.

Senator DEWINE. Mr. Richardson, thank you very much.

Mr. Peace.

STATEMENT OF RICHARD PEACE

Mr. PEACE. Thank you. Mr. Chairman and members of the subcommittee, at the end of the 1996 football season our Wyoming Cowboys finished with one of the best records in the country. With a regular season record of 10 wins and only one loss, the Cowboys were the first Western Athletic Conference team to capture a Pacific Division title.

Heading into the Western Athletic Conference championship game, there were rumors that if we did not beat fifth-ranked Brigham Young, we would not be invited to a post-season bowl. We felt that if we competed the way we had all year, we would prove our merit as a team. We ended up losing the game by an overtime field goal, but we felt like we earned the right to a post-season appearance. Those positioned in the bowl selection committees, however, did not agree.

When the bowl invitations were issued for the 1996 season, the University of Wyoming was systematically eliminated from play, citing low season attendance as the factor. Considering the fact that we had a higher winning percentage than three-quarters of the teams in post-season play, and were the only nationally ranked team that did not receive an invitation to a bowl, although 13 unranked teams did, we feel immediate changes are absolutely necessary.

The bowl system was originally established as a reward for the teams that finished the season with the best records. However, somewhere along the line, the focus shifted from rewarding successful teams to lining the pockets of successful corporations. Interest was taken away from the student-athletes who dedicated themselves to excellence and focused toward the marketability of programs that make the most money.

Located in a State that is populated by less than 500,000 people, there is little we can do to increase the attendance at Wyoming football games. What we can control, however, is our performance on the field of play. Our football team worked very hard all year long and was ultimately punished for having a low fan base. Although there is nothing we can do about this last season, something must be done to ensure no other programs are mistreated in this manner in the future.

Wyoming's snub from post-season play was an indirect result of another impropriety in the Western Athletic Conference. The BYU Cougars were not invited to participate in one of the Alliance bowls even though they had earned the right to be there. The alliance was established to match the top teams in the Nation in an attempt to better determine the national champion.

Instead of having the fifth-ranked team in the Nation playing in one of these games, lower-ranked teams were taken on an at-large basis. The BYU Cougars were left out of the championship bowls because certain conferences were given automatic berths while others were not. In fact, the University of Texas, which received an automatic bid to an Alliance bowl as the Big 12 Conference champion, was ranked No. 23 in the final poll both by the national media and by the college coaches, while Wyoming was ranked 22nd in both of these polls.

The WAC was ignored by the Bowl Alliance because it is a conference that seldom receives the respect that it deserves. The Alliance set their criteria for any non-Alliance school to play in one of their bowls. BYU met that criteria and was still left out. This fact, and the fact that Wyoming did not receive any bowl invitations at all, demonstrates the blatantly unfair and unequal treatment received by the Western Athletic Conference.

The biggest injustice, however, was not to the University of Wyoming or to the Western Athletic Conference, but to my senior class of 1996. Even though the whole team was left out by the Alliance, the seniors, including myself, will never have another chance to play in a bowl game. It is widely believed in college football that you are only as good as your senior class, and the Wyoming class of 1996 was one of the best in school history.

When I think of some of the things that we have accomplished this year—the longest winning streak in the Nation at 12 games, the winner of the Biletnikoff Award, three All-Americans, two academic All-Americans, and the first-ever Western Athletic Conference Pacific Division championship—I am even more convinced that the Wyoming Cowboys senior class deserved a chance to play in the post-season.

Every Saturday, we left our hearts on the field and our souls in the hands of our classmates as we persevered through an extremely emotional season. We played football not for ourselves and not for our coaches, but for each other. Unfortunately, we were robbed of the opportunity to wear the Wyoming brown and gold one final time because some corporation did not feel that we were marketable enough. The current bowl system took away not only part of our season, but part of our lives, a part that can never be replaced.

Although nothing can be done to change what happened this year, it is imperative that something be done to ensure fair and equitable access to championship opportunities for all NCAA schools in the future. Teams should be invited to play in the post-season on merit and nothing else. The NCAA is an organization that promotes fairness and the pursuit of excellence by all participating student-athletes. We at the University of Wyoming, especially our seniors, hope that you do what is necessary to make sure that fairness and the pursuit of excellence is maintained for all student-athletes, regardless of race, gender, sport, school, division, or conference.

Thank you.

Senator DEWINE. Mr. Peace, thank you very much.

Mr. Kramer.

STATEMENT OF ROY F. KRAMER

Mr. KRAMER. Mr. Chairman and members of the subcommittee, my name is Roy Kramer. I am the commissioner of the Southeastern Conference, and prior to that for approximately 12 years I was the athletic director at Vanderbilt University. Prior to that, for 13 years I was the head football coach at Central Michigan University, a member of the Mid-American Conference, and prior to that for 12 years I was a high school football coach. For more than 40 years, my life has been a part of interscholastic and intercollegiate football. I speak to you today not from notes and not from charts and not from statistics, but from the heart for what is good for college football.

Before the formation of the bowl coalition and the Alliance, the selection process for the bowls was a chaotic, disorganized mess.

We often had teams selected in mid-October who later lost three of their last four games. At times, maybe even in my part of the country, a team made an arrangement before the season ever started because they happened to have a power coach. Rarely did that old system provide us an opportunity for a national championship. In fact, only 9 times in 45 years were we ever able to put together the No. 1 versus the No. 2 team in the Nation.

In contrast, the coalition, and now the Alliance, have given us a one-two match-up three of the last 5 years, failing only twice, and the only reason it failed in those 2 years was because the Pac–10, the Big 10, and the Rose Bowl were not a part of the agreement. As my fellow witness, Mr. Richardson, has alluded to, in 1994 Penn State was No. 2 and did not have that opportunity. And, of course, last year Arizona State was No. 2 and did not have that opportunity.

The change with the new Alliance will end that difficulty, and for the first time the Rose Bowl, but far more importantly, the champion of the Pac–10 and the Big 10, will be available to play for a national championship game. This is what the fans of college football have asked for all through the years, and now for the first time in the history of all of the bowl arrangements and all of the issues that have faced college football, that arrangement is there.

That is a far cry from 1984, when Brigham Young was ranked No. 1 in the country and played in the Holiday Bowl against an unranked 6–5 Michigan team. Today, if Brigham Young were ranked No. 1 or No. 2 in the country, they would play in the Sugar Bowl or the Orange Bowl or the Fiesta Bowl, or perhaps in the year 2002 in the Rose Bowl.

For the first time in college football history, we have opened the bowl agreements more so than they have ever been in history, and in so doing we have elevated the possibility of excitement in college football, but at the same time doing it within the framework of the bowl system which is so important to maintain for all of our colleges across the country, an atmosphere that hopefully under this Alliance we can continue to expand, as we are right now, adding two more bowl games; in fact, an additional opportunity for competition for the WAC Conference next year as a result of pushing forward in every area we can to improve college football, and that is what we are about.

The other issue at hand today is the fact that there are guaranteed slots in this Alliance. We have heard much about that today—the guaranteed slots for the ACC, the Big East, the Southeastern Conference, and the Big 12. But to understand this arrangement, you have to understand it wasn't put together in a vacuum. It was put together in the context of the long, traditional agreements of the major bowls.

The Southeastern Conference, as Senator Sessions has stated, has had a long-term agreement with the Sugar Bowl. The Southeastern Conference would not give up the Sugar Bowl without some kind of a guarantee that they had an opportunity to participate in a major bowl. This agreement would not be in place if the Pac–10 and the Big 10, perhaps more so than anybody else, is giving up that opportunity to occasionally not play in the Rose Bowl for the first time in 50 years. We have to understand the atmosphere in which it was created, not how it was created.

Is the Alliance system perfect? Oh, no. No system ever put together by human beings, even members of the U.S. Senate, is perfect. Can it be changed? Certainly. Can it be evaluated? Certainly. That is what we are about in intercollegiate athletics. We work at it. We will attempt to improve it.

Today, in the hands of the WAC Conference and Conference USA is a proposal to guarantee them access if they are ranked in the top six teams in the Nation. For the first time in history, those conferences, recently realigned and recently formed, will have an opportunity to play their way into the Rose Bowl, to the Sugar Bowl, to the Orange Bowl, and that has never happened in the history of college football.

In addition to that, we will supplement each of those conferences with a revenue participation fee equal to an amount greater than what they receive from the bowl they regularly have an agreement with today. In addition to that, the Alliance wants to move forward and help not just a limited number of Division I–A schools, but all of Division I, including I–AA, for we believe it is important for the survival of college football that we make a financial commitment to the conferences represented by a Grambling or a Western Carolina or Montana, for that is what college football should be about.

I am here to say that we have worked very diligently to put together a plan, a plan that I will tell you I believe strongly with all my heart is improved, not perfect, better for the fans, better for the public, and most of all better for the young student-athletes who play the game.

Thank you very much.

Senator DEWINE. Mr. Kramer, thank you very much.

[The prepared statement of Mr. Kramer follows:]

PREPARED STATEMENT OF ROY F. KRAMER

Mr. Chairman and Members of the Subcommittee: My name is Roy Kramer, and I am Commissioner of the Southeastern Conference and have served in that capacity since 1990. Before that I was athletic director at Vanderbilt University in Nashville for about 11 years, and prior to that I served as head football coach at Central Michigan University. I have been fortunate, Mr. Chairman, to spend much of my professional life in and around college football. As a representative of one of the conferences that have put the Bowl Alliance together, let me say that I appreciate the chance to discuss the benefits of the Alliance arrangement with you and welcome this opportunity to provide not only information concerning this arrangement but also an historical perspective of the bowls in general and the very important role they play in college football today.

Mr. Chairman, each of the college football bowl games that exists today is sponsored by an independent entity and basically managed by a bowl committee that often works in conjunction with the Chamber of Commerce or Convention and Tourist Bureau or both in the local community hosting the game. While the bowls were created to provide postseason opportunities for teams in college football, they were also designed to provide an economic boost to the host communities at a time of the year—roughly between Christmas Day and the beginning of the New Year or a couple of days thereafter—when business was generally very slow.

Over the years as the bowl system developed, certain of the older bowls that traditionally played on New Year's Day developed very close ties with certain conferences. Perhaps the most well-known is the Rose Bowl, the "Granddaddy" of all of the college football bowl games, and its relationship with the Big Ten and Pacific-10 conferences. Since the end of World War II, those two conferences have had agreements for their respective champions to play in the Rose Bowl on New Year's Day. Other bowl games had similar relationships with particular conferences. The

Southwest Conference, which is no longer in existence, for years sent its champion to the Cotton Bowl in Dallas. The Big Eight Conference, which is now known as the Big 12, had an agreement with the Orange Bowl for its champion to host that game, and my own conference, the Southeastern Conference, for many years had an agreement to send its champion annually to the Sugar Bowl in New Orleans. With the exception of the Rose Bowl, each of these bowls had one open slot available to be filled by any team eligible to participate in a bowl game.

Until the early 1990s, however, the selection process by which these bowls chose teams to match up against their affiliated conference champions was totally disorganized and in many cases resulted in almost a chaotic situation. In addition, these bowls also competed with several other bowl games for teams to fill their vacant slots. In order for all of the bowls to be competitive, each became very aggressive in attempting to attract teams to their various locations. As a result, we often found teams being selected to play in certain bowls very early in the season, and in some cases as early as mid-October. In fact, in some situations depending on the notoriety of a particular coach and the historical attractiveness of a particular team, informal arrangements may have been made as early as the beginning of a season. This selection process sometimes resulted in very poor matchups and in teams participating in historically attractive bowl games despite relatively mediocre records. Moreover, this system rarely matched the top two teams in the nation against one another in the last game of the season.

Three factors began to alter that scenario in the early 1990s. First, the Orange, Sugar, and Cotton Bowls, along with the Fiesta Bowl, began to discuss among themselves a possible format that would at least delay the selection process until the end of the season, thus creating more competitive matchups between deserving teams and increasing the possibility of a pairing between the two top-ranked teams in a bowl game.

Second, at almost the same time, a new bowl in southern Florida, the Blockbuster Bowl, offered the newly created Big East Football Conference and the Atlantic Coast Conference very significant payouts to send their respective champions to that bowl game each year. In fact, the payments offered by the Blockbuster Bowl were significantly higher than the payments being made at that particular time by the Sugar, Orange, Cotton and Fiesta Bowls to their participating teams.

Third, most of the major independent teams that had often been selected to play in the major New Year's Day bowl games and that had consistently competed for the national championship decided to join various conferences. Penn State joined the Big Ten. Syracuse, Miami, Boston College, West Virginia and several others became members of the newly formed Big East Conference. Florida State, a long-time national power as an independent, became a member of the Atlantic Coast Conference. The result was that the bowls, particularly those that had affiliation arrangements with certain conferences, no longer had a large group of powerful independent teams from which to fill their open slots.

For a number of years, the conference/bowl affiliation agreements had prevented certain conference champions from playing against one another in bowl games. With the disappearance of a number of the traditionally most powerful independent teams, it became clear that each of the conference champions contractually committed to play in certain bowl games would be relegated to playing against second-place teams in other conferences or perhaps, in certain years, against Notre Dame, which was the only remaining independent in the nation that had consistently appeared in one of the traditional New Year's Day bowl games.

As a result of all of these developments, four of the major New Year's Day bowl games, the Orange, Sugar, Cotton, and Fiesta Bowls, and several conferences formed the original Bowl Coalition. Under this plan, the Orange Bowl, the Sugar Bowl, and the Cotton Bowl continued to be hosted by their respective affiliated conference champions, while the Fiesta Bowl had two open slots. These four bowls agreed to select teams in order and to fill their open slots from among the champions of the Big East and the ACC, Notre Dame, and additional teams that were attractive and had completed their seasons with exceptional records. As previously mentioned, the aim was to create more competitive matchups and, whenever possible, a game between the top two teams in the nation.

Obviously this system was imperfect. If the Big Eight champion were ranked No. 1 in the country and the Southeastern Conference champion were ranked No. 2, the existing conference affiliation agreements with certain bowls prevented those teams from playing against one another. The Big Eight champion was still obligated to play in the Orange Bowl, and the Southeastern Conference champion was still obligated to play in the Sugar Bowl. Despite its flaws, however, the Coalition did produce national championship games between Miami of the Big East and Alabama of the Southeastern Conference after the 1992 season and between Florida State of the ACC and Nebraska of the Big Eight following the 1993 season. It also greatly enhanced public interest in the bowls both years.

As I mentioned, it was evident from the beginning of the Coalition arrangement that this plan could never guarantee a national championship game every year because of the existing conference/bowl affiliation agreements. However, all of those existing agreements, except the Big Ten and Pac-10 contracts with the Rose Bowl, expired at the end of the 1994 season. At that time, the commissioners of several conferences, having seen the success of the Coalition, began to discuss whether there was a way of building on the benefits of that arrangement while simultaneously enhancing the possibility of an annual matchup between the top two teams in the nation. The result of those discussions was the formation of the Bowl Alliance, which began play after the 1995 football season.

Under the Alliance, the Southeastern Conference and the Big Eight Conference (which has now become the Big 12) gave up their traditional host relationships with the Sugar and Orange Bowls respectively. This was a very difficult decision. For my conference it was perhaps one of the most difficult decisions we have made since I have been Commissioner because the Southeastern Conference had a very long-standing, traditional relationship with the Sugar Bowl. That game is played in New Orleans, which, geographically, is very close to many of the member institutions of the Southeastern Conference and thus to a substantial portion of our alumni and fan base. Moreover, historically, our teams had viewed the conference championship race as a race for a Sugar Bowl berth. Having that as a goal enhanced our regular season conference race tremendously and gave a special emphasis to our conference championship game. Similar relationships had developed between the Big Eight Conference and the Orange Bowl and between the now disbanded Southwest Conference and the Cotton Bowl.

In order for my conference and the Big Eight to give up their guaranteed host relationships with their particular bowls, it was absolutely necessary to guarantee their champions a slot in one of the Alliance bowls. I know from my dealings with my own conference members that, had the Southeastern Conference champion not been guaranteed a slot in one of the Alliance bowls, we simply would not have participated in the arrangement. We were very happy with our relationship with the Sugar Bowl but saw the Alliance as an opportunity to enhance substantially the chance for matching the top two teams in the nation and thus to improve both the bowl system and college football generally. As difficult as it was for us to give up our traditional relationship with the Sugar Bowl, we felt that we could do so because the new Alliance arrangement substantially increased the possibility that our champion could participate in a national championship game. Yet it was also imperative that our champion have some comparable bowl opportunity similar to the one we were giving up when it did not qualify to play in the national championship game. Had no comparable opportunity been guaranteed to our conference champion, the member institutions of my conference would have never authorized me to discuss inclusion of the Southeastern Conference in the Alliance. I am sure that the members of the Big Eight had similar discussions when that conference agreed to give up its traditional relationship with the Orange Bowl.

The Alliance arrangement also provides guaranteed bowl slots to the champions of the ACC and the Big East Conference. Those conferences had earlier given up a very attractive offer from the Blockbuster Bowl to participate in the Bowl Coalition. That decision in no small measure contributed to the success of the Coalition, since the ACC and Big East champions each competed for the national championship in the two years that the Coalition was able to put together a national championship game. It was quite clear that any effort to put together a national championship game on a regular basis would necessitate the participation of those two conferences, and it was equally clear, as the Blockbuster Bowl offer demonstrated, that each of those conferences could independently obtain very attractive affiliation agreements with particular bowls. Since these conferences also had to forego such attractive bowl slots for their champions, it was necessary to provide their champions guaranteed slots in one of the Alliance bowls in order to obtain their participation in the arrangement and thus further enhance the possibility of a national championship game.

The Big Ten and Pac-10 also agreed to participate in the Alliance arrangement but could not commit their champions because those teams were contractually committed to play in the Rose Bowl. They did agree, however, to make their other bowl-eligible teams available for selection by one of the Alliance bowls. Notre Dame likewise made itself available.

The conferences that participated in forming the Alliance arrangement ultimately invited all of the NCAA-certified bowl games to submit bids to be a part of the arrangement. After receiving nine bids from various bowls, the Alliance conferences

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eventually accepted the proposals of the Orange, Sugar, and Fiesta Bowls and entered into a contract with those particular bowl committees. Under the Alliance arrangement, each of these three bowls selects teams in order. One bowl has the first two team selections, another bowl has the third and fifth selections, and the remaining bowl has the fourth and six selections. Selection order rotates among the three participating bowls. Of the six slots available in these three bowl games, four are guaranteed to the champions of the ACC, Big East, Big 12, and Southeastern Conferences. The remaining two slots are open and can be filled by any bowl-eligible Division I–A football team that meets certain criteria. These at-large teams are chosen solely by the bowls. However, if any at-large team is ranked either No. 1 or No. 2 in the nation, it is guaranteed a slot in the national championship game.

Again, when the Alliance was formed, all parties realized that it could not guarantee a national championship game every year because both the Big Ten and Pac-10 champions remained committed to the Rose Bowl and thus were not available to an Alliance bowl if ranked No. 1 or No. 2. Nevertheless, despite their imperfections, both the Coalition and the Alliance have delivered on their promise to produce national championship games. In the last five years, these agreements have produced three such games: Alabama vs. Miami after the 1992 season; Florida State vs. Nebraska after the 1993 season; and Florida vs. Nebraska after the 1995 season. This latter game is particularly noteworthy because, without the Alliance arrangement, that game could not have been played under any previous bowl system existing in the last two decades. Florida, as the Southeastern Conference champion, would have been committed to play in the Sugar Bowl, and Nebraska, as the Big Eight (now Big 12) champion, would have been committed to play in the Orange Bowl. In the remaining two years, a national championship game was not possible because, in both cases, the No. 2 team in the nation was either the Big Ten champion or Pacific-10 champion and thus committed to the Rose Bowl. Nonetheless, this record of creating national championship games was a substantial improvement over the prior bowl system. Before formation of the Coalition, the bowl system had matched the top two teams against one another only nine times in 45 years.

This lengthy history is important, Mr. Chairman, because it explains how we got to where we are today. The Alliance arrangement and the efforts to create a national championship game were not created in a vacuum but instead grew out of a long history of close relationships between particular conferences and particular bowls. Those relationships account for the current structure of the Alliance and the guaranteed slots to certain conferences who have given up longstanding and traditional relationships or chosen not to enter into such arrangements in order to make the Alliance and its benefits possible.

As I have already noted, when the current Alliance agreement was initially formed, it was evident to the fans, to the media and to everyone concerned with college football that such a plan could not guarantee a match up between the two best teams in the nation at the end of the year. The champion of the Pacific-10 Conference and the champion the Big-Ten Conference were still not able to participate in this arrangement because of their long standing and traditional agreements with the Pasadena Tournament of Roses Association to play in the Rose Bowl.

About a year and a half ago, the Commissioners of these conferences along with ABC, who has the telecasting rights to the Rose Bowl until sometime after the turn of the century, entered into discussions about the possibility of integrating the Rose Bowl into the Alliance arrangement and thus creating a true opportunity for the No. 1 team and the No. 2 team in the nation to play in one bowl game at the end of every season. This was an enormous change in the tradition of college football. The Rose Bowl has, for more than 50 years, paired the Pac-10 and Big Ten champions against one another at 5:00 p.m. Eastern time on New Years' Day. However, the fact that, in 1994, Nebraska was ranked No. 1 and Penn State No. 2 and could not play because of the contractual obligations of their respective conferences heightened the interest in putting together a new arrangement. The results of last season, in which Florida State finished the season ranked No. 1 and Arizona State ranked No. 2, only further magnified the need for some type of arrangement involving the Rose Bowl if a true national championship game were to take place on an annual basis. Accordingly, a new Alliance arrangement will begin following the 1998 football season.

This new arrangement will include the Rose Bowl and three other bowls to be determined. The four conferences with guaranteed slots in the current Alliance arrangement will have guaranteed slots in the new arrangement. Again, such slots are necessary because of the significant and traditional relationships these conferences have given up or otherwise foregone in order to make the Alliance arrangement possible. The Big Ten and Pac-10 champions will still play annually in the Rose Bowl unless one or both of them are ranked among the top two teams in the nation. In that case, if the Rose Bowl is not scheduled to host the national championship game, the Big Ten and Pac-10 have agreed to send their champions to play in the national championship game, instead of the Rose Bowl. Furthermore, the Big Ten and Pac-10 have agreed that the Rose Bowl will host a national championship game in January 2002 and will pair the two top-ranked teams regardless of conference affiliation. Thus, for the first time in more than a half century, the Rose Bowl will be open to teams outside the Big Ten and Pac-10 conferences. This is an enormously significant change for college football.

In addition to the six slots committed to certain conference champions, the two remaining bowl slots will still be open and can be filled by at-large teams from any Division I–A institution chosen by one of the bowls to play in its game. As is the case with the current Alliance arrangement, any at-large team that is ranked either No. 1 or No. 2 will be guaranteed a slot in the national championship game regardless of conference affiliation. The Alliance members believe that maintaining these two open slots is critical so that Notre Dame and other highly-ranked independent teams or teams from other conferences can compete for Alliance bowl slots and be available to the Alliance Bowls and to the championship game itself.

Let me say, Mr. Chairman, that those of us involved with the Alliance arrangement believe that it has strengthened the bowl system, which has been very good for college football, while at the same time substantially increasing the likelihood of a national championship game for the fans.

In that regard, I would like to speak just briefly about the importance of the bowl system to college football and the benefits it provides when compared with an NFL-style playoff. Those of us who have been around the game for a long time are eminently aware of the importance of the bowl system as a whole, not just the bowl hosting the one-two game or those bowl games that are played on New Year's Day between conference champions or other highly regarded teams. All eighteen (and soon to be twenty) bowls across the country are important to college football. I often hear from the media and perhaps on radio talk shows that there are too many bowls. I have yet to talk to a student-athlete, a coach, or an institution that participated in one of these bowls that thought there were too many of these games. Rather the usual criticism is that there are not enough bowls because certain teams did not have an opportunity to participate. In my opinion, it is enormously important to maintain all of the bowl games for the good of college football. In my conference, the opportunity to play in a bowl is critical for a Kentucky, a Vanderbilt, a Mississippi or other teams who may not compete for the conference championship every year but who occasionally turn out relatively successful teams. It is critical for them to have postseason opportunities as a reward for the achievement of their student-athletes. That same story is true in all other conferences across the country.

At the same time, there is great interest among the public for some finality to the season with a champion crowned on the field. Thus, in my view, it is critical that college football be able to create some type of a national championship game and yet maintain as best we can the maximum number of opportunities for postseason competition for all of the teams that participate in Division I–A football.

Today some 4,000 student-athletes have an opportunity to go to a bowl game and experience that postseason excitement. Reducing that number with some type of playoff system or other type of bowl arrangement would be very damaging to college football as we know it today. Obviously, there are those who have argued for years in the media and perhaps in the public that college football should have a playoff. It is also most evident that a playoff would, at a maximum, involve eight teams. The bowl system would be greatly threatened if the fan interest, television rights fees and corporate sponsorships that currently support the bowls were shifted to the playoffs. The result would be fewer teams participating in postseason play, fewer student-athletes having postseason opportunities, and, in my view, college football losing a great portion of its tradition and thus suffering in the long run. Therefore, those of us who have been a part of this process over the course of the last eight to ten years continue to be very concerned that we not damage the bowls, which have been so good to college football for more than eight decades.

Is the Alliance system perfect? No. Are there changes that could be made in the future? Perhaps. But I would emphasize that, for the first time in history, the major bowls are open to every Division I–A football team in the country. In 1984 Brigham Young finished the season ranked No. 1 in the country, but ended up participating in the Holiday Bowl against an unranked Michigan team with a 6–5 record. Under the Alliance system that same Brigham Young team would now participate in the national championship game and perhaps even in the Rose Bowl. There are ongoing discussions that would open up the Alliance bowls even further to teams outside the Alliance conferences who achieve certain rankings. I believe that could be a positive arrangement to further provide bowl opportunities to all Division I–A teams.

With the Alliance arrangement, for the first time in the history of college football, all of the major conferences have come together under one umbrella to create a true national championship game and to help preserve and strengthen the bowl system. The Alliance also believes that it is important that, directly or indirectly, we provide a certain amount of financial backing for all of Division I football, including Division I–AA teams that do not play in bowl games, in order to help assure that college football will endure and continue to thrive into the 21st century at all levels.

We strongly believe that this Alliance, whatever its imperfections and despite the criticisms, provides the best and most open opportunity for all Division I–A institutions to play in the most attractive bowl games. In fact, based on the history of the bowl games, we do not believe that point can seriously be disputed. At the same time, the Alliance provides the fans and the public in general with the best opportunity yet for the two highest-ranked teams to play at the end of the year and settle the national championship on the field. Those are substantial benefits for all parties involved with the great game of college football and, in our view, amply justify the Alliance arrangement.

Again, on behalf of all of the members of the Alliance, thank you for the opportunity to speak to you about these matters.

Senator DEWINE. Mr. Benson.

STATEMENT OF KARL BENSON

Mr. BENSON. Thank you. Good afternoon. My name is Karl Benson. I am the commissioner of the Western Athletic Conference, and today I speak on behalf of the 16 universities of the WAC, but more importantly the 1,600 student-athletes who compete in the sport of football in the WAC.

The WAC is a relatively young conference, founded in 1962, and as you may know, expanded to 16 teams this past year to become the Nation's largest conference. Its 16 schools are located in nine States, have a combined undergraduate enrollment of over 270,000, and a combined alumni of over 1.5 million.

As demographics change and the population shifts to the West, the WAC is poised for the future and expects to be a prominent player in the arena of intercollegiate athletics as we go into the next century. However, the WAC believes strongly that being excluded from the College Football Bowl alliance has, and will, restrict its efforts to compete successfully in the marketplace.

During the summer of 1994, the WAC made attempts to become a member of the Alliance. We did not seek the automatic berths or revenue that the other six conferences received, only membership status that would allow the WAC an opportunity to be part of the club and benefit from the association of the Alliance and major college football.

Last July, upon hearing of the proposed superalliance, the WAC again made attempts to join the Alliance, but to no avail. Again, the WAC was looking for only membership status that would allow its 16 members to be viewed by the media and the public as part of the Alliance and part of that major college football brand. Many WAC coaches and administrators believe this exclusion was and still is a concerted effort by the Alliance to relegate the WAC to second-class status and effectively force the WAC out of the marketplace.

The WAC was led to believe that it could play its way into one of the Alliance bowls if one of its teams had an outstanding season. The two at-large berths were supposedly a way to open the marketplace to those non-Alliance conferences. The 1996 Bowl Alliance Media Guide states, "enables those bowls the flexibility to choose the absolute best match-ups from the available pool of eligible teams." Nowhere does it say that the teams are selected based on the economic impact they may have on the community or tradition or television ratings.

The 1996 season proved to be very successful for the WAC, with both BYU and Wyoming ranked in the top 15 at one time, and as the season came to an end it appeared that BYU was headed for one of those Alliance bowls. Finishing the season, as we have said, with a record-breaking 13 wins and ranked No. 5 in both polls, it certainly seemed reasonable that a BYU-versus whatever other team would be considered as a one of those absolute best match-ups that the Alliance wanted to create.

But on December 8, the WAC and many college football fans throughout the country found out and realized that those sought-after and lucrative at-large berths perhaps were only reserved for the members of the club. The Fiesta Bowl or perhaps the Orange Bowl was going to disappoint one conference on December 8. Would it be the Big 12 or the Big 10, two of the conferences who were currently partners with and who would determine whether those bowls continued to be part of the Alliance, or the WAC? Unfortunately for the WAC, they chose.

This past year, the four Alliance bowls distributed over $65 million to the six conferences, $16 million each to the two conferences, the Big 10 and the Big 12, who received those two at-large berths. Following the 1998 season, it is expected that nearly $100 million will be distributed from the four bowls, with each of the six conferences guaranteed a minimum of $12 million.

As we have said, these are big stakes and this is big business. The WAC cannot afford for the financial disparity that currently exists between the haves and have-nots to escalate even more under this closed marketplace system. The Alliance and post-season football is flawed. The WAC desires a system that allows its student-athletes the same opportunities as other conferences to compete, a system that allows WAC schools a fair chance to compete for the enormous revenues that have been created.

There has to be a better way to operate post-season football. I think the WAC would also agree that this may not be the right place to make the change, but someone needs to step forward and help us fix post-season college football so that the WAC and college football can grow and prosper.

Thank you.

Senator DEWINE. Mr. Benson, thank you very much.

[The prepared statement of Mr. Benson follows:]

PREPARED STATEMENT OF KARL BENSON

Good afternoon. My name is Karl Benson and I am the commissioner of the Western Athletic Conference. I speak today on behalf of the 16 universities of the WAC and specifically the 1600 student-athletes who compete in the sport of football in the WAC. I also speak on behalf of Conference USA, and the Big West Conference and Mid-American Conference—collectively speaking, the non-alliance conferences.

Beginning in late summer of 1994 the WAC made attempts to become a member of the College Football Alliance and join the group of 62 colleges and universities who have anointed themselves as "the group that comprises major college football" in this country. We did not seek the automatic berth that the other six conferences received; only membership status that would allow the WAC the opportunity to be "part of the club" and benefit from the association with the Alliance. Unfortunately, that did not occur and the WAC played the 1995 season—the Alliance's first year—on the "outside," knowing that its only chance to play in one of the lucrative bowl games was to qualify for one of the at-large berths. The 1995 football campaign was not highly successful for the WAC and none of its teams received any consideration for the Alliance bowls, and rightfully so.

In the summer of 1996, upon hearing of the proposed Super Alliance, the WAC again made attempts to "join the club" but to no avail. Again, the WAC was only looking for membership status that would allow its 16 members to be viewed by the media and the public as part of the Alliance, and to provide its student-athletes with the same participation opportunities as their counterparts in the other conferences. Many WAC coaches and administrators believe this exclusion was a concerted effort by the Alliance to relegate the WAC to "second class" status by keeping WAC coaches from recruiting the high profile student-athletes; and, by keeping the WAC from being able to compete fairly for future TV rights and corporate contributions in the market place.

The WAC was always made to believe that it could "play its way" into one of the Alliance bowls if one of its teams had an outstanding season. The two at-large berths were supposedly created as a way to "open the market place" to the teams from the non-alliance conferences.

The 1996 Bowl Alliance media guide clearly states that it "enables those bowls the flexibility to choose the absolute best match-ups from the available pool of eligible teams." It doesn't say that teams are selected based on the economic impact they may have on the community; although, there has been more recent Alliance material that states the selections are made based in part on tradition, rankings and the economic impact a certain team may have over another.

The 1996 season proved to be very successful for the WAC, and as the season progressed, it appeared that BYU was headed for one of the Alliance Bowls. Finishing the season with a record-breaking 13 wins and only one loss and ranked #5 in both polls, it certainly seemed reasonable that a BYU versus whomever, would be considered as one of those "absolute best match-ups" that the Alliance wanted to create.

But on December 8, the WAC and college football fans throughout the country found out that those sought after at-large berths were only a dream, and appeared that they were reserved only for "members of the club."

The WAC contends that had BYU been selected for the 1997 Fiesta Bowl, rather than Penn State, the Phoenix community would have received similar economic impact. The WAC also contends that TV ratings for the game would have been very similar. But, what is more important, had BYU been selected, Sun Devil stadium would have been filled on January 2 because the fans wanted to see the "best match-up available" and last year that "match-up" should have been BYU versus Texas.

The Fiesta Bowl, and perhaps the Orange Bowl, were going to disappoint one conference on December 8—would it be the Big 12 or Big 10, two of the conferences that they were currently partners with and who would determine whether those bowls continued to be part of the Super Alliance, or the WAC? I think we know the answer.

The WAC recognizes that these six conferences have been responsible for the growth and development of the Alliance bowls—Sugar, Orange, Fiesta and Rose and consider them their "property." Although, one must not forget that the Fiesta Bowl was founded in 1971 with the WAC champion playing in its first nine games.

This past year, the four Alliance Bowls distributed nearly $64M to the six conferences; $16M each to the two conferences (Big 10 and Big 12) who received the at-large berths. In 1998, it is expected that $96M will be distributed from the four bowls—an average of $16M per conference. These are big stakes and it appears only available for members of the club.

The current bowl system is flawed. The WAC desires a system that allows its student-athletes the same opportunities as other conferences to compete in post season football; a system that allows WAC schools a fairer chance to compete for the revenues generated by the Alliance bowls so that it's member schools can fund their athletic departments in a way to continue to provide maximum participation opportunities to both men and women student-athletes. There has to be a better, and a fairer way.

Senator DeWINE. Mr. Dempsey.

STATEMENT OF CEDRIC W. DEMPSEY

Mr. DEMPSEY. Chairman DeWine, I am Cedric Dempsey, executive director of the NCAA. I have served in that post since January

2, 1994. I am now completing my 47th year in intercollegiate athletics. I have been a player, I have coached, I have been an athletics director, and now serve in the Association as its Executive Director.

I have provided you, Mr. Chair, a written statement and I ask that that written statement be placed in the hearing record.

Senator DEWINE. That will be made a part of the record. In fact, all the written statements that have been submitted will be part of the record.

Mr. DEMPSEY. What I would like to do in the time I have is give a little chronology and background of post-season football and hopefully put some of the issues in perspective for you. As a former historian, I think understanding the past is important to understanding how we might move forward in the future.

As indicated, the NCAA is an organization of 940 institutions and about 300 other constituent groups that form a body of membership of 1,200. Its primary mission is to make sure that intercollegiate athletics is part of higher education and that the student-athlete is an integral part of the student body.

I would have to take exception to Senator Bennett's comments earlier. We are not a farm system in football for the NFL. If we are, we are a pretty poor one, since only less than 1 percent of football players in the collegiate scene go on to play in the NFL. We have close to 30,000 young people who are gaining a very valuable educational experience in higher education and supplementing that with an opportunity to learn more about themselves and to participate in an excellent game.

So I think that needs to be clearly stated that we are not a farm system. That is not our purpose. The fact that we have a few athletes who are able to go on and have a fine professional career is certainly an add-on to some of the experiences that they have, but that is not our main purpose.

Looking historically at intercollegiate athletics and football, in particular, it is interesting to note that post-season football is older than the NCAA. It was in 1894 that the first post-season football game occurred. It was when Alonzo Stagg, when he was at the University of Chicago, invited the University of Notre Dame to come to Chicago after the season was over and play in a post-season game. In 1902, the Rose Bowl played its first game. So it has been a long time since we first had our first post-season football game.

It was not until 1906 when, interestingly enough, President Teddy Roosevelt asked that a special commission be formed to look at the ills of college football. There were a number of injuries, a number of deaths in that particular year, and his charge to a special task force was to say if you cannot provide rules and regulations to govern the game and make it a safer game, then we should abolish the game of football. It was out of that context that the NCAA was born and named in 1911 the National Collegiate Athletic Association.

From that point until 1951, we had a continual display of post-season football. It was interesting. Probably the largest number of post-season games that we had occurred during the Depression years. In about 1930, 1931, there were as many as 100 games after the season was over. That was for a very noble cause. That was to

A6

help people who were having difficulty with employment and certainly in terms of surviving during that period of years.

As the bowl system began to evolve, and it really began to evolve then after that period of time, it was in 1951 that the NCAA membership decided to develop a certification process for the bowl system. Recognizing the bowl system was already in place, it was not ruling the bowl system. There were already private organizations in different cities that had certain bowls already in place, so the role of the NCAA has been one to certify those bowls to make sure that it had, one, the welfare of the student-athlete in mind, and, second, that it had the welfare of the institutions in mind so that institutions would not be spending a great deal of money to go into post-season athletics.

The third part of the bowl system was to see what the goals and benefits of any kind of dollars that were derived from it, where it would go. The Association since 1951 has monitored that practice through a special events committee, and more recently a nine-person Division I football committee that makes sure that the goals are met by the certified bowls that we have.

So I think it is important to understand where we have come from in order to understand where we ought to go, and it is with that historical background that I think it is important to recognize—many people have asked, why isn't the NCAA involved in the game? I think, hopefully, that helps you understand how we have evolved into the game. There are number who have indicated we should have a playoff, and it seems to me a lot of the discussion today has represented some confusion.

As Commissioner Kramer talked about, it is pitting one versus two. It is not a championship playoff. It is not a playoff that is conducted by the Association, and therefore is not the same kind of structure as we have in basketball. The NCAA has 81 national championships. The only sport that is sponsored through the NCAA in which we do not have a football championship is in Division I–A. We have a I–AA championship, we have a Division II championship, and we have a Division III championship.

But it has not been the will of the membership to have a Division I–A championship, even though it has been studied since 1970. Almost every decade, we have had studies looking at whether or not we should have a national championship. It has been brought to the floor for legislative purposes. In 1988, it was brought to the floor. It was withdrawn from vote at that time. In 1994, we had the most recent and probably the most exhaustive study of whether or not we should have a playoff for intercollegiate athletics in Division I–A college football.

At that time, which has been consistent, the presidents of higher education in Division I–A have indicated that they were not interested in having a post-season Division I–A championship playoff. They have been asked against most recently. We have just gone through a restructuring of the NCAA. The new board of directors of Division I–A has been asked by the president's commission of the old association and structure if they would review this issue to see if we can find some way to readdress the post-season football issue that is before you at this time.

I agree with Senator Kohl that I think the best place to handle this is with the membership itself. I am very confident that in our new structure, the presidents of our organizations will act in a collegial and best-effort manner to resolve this issue in a most effective way. So I would certainly concur with Senator Kohl on this issue as it relates to whether or not we should move forward or what the role of the Association ought to be.

Thank you.

Senator DeWine. Mr. Dempsey, thank you very much.

[The prepared statement of Mr. Dempsey follows:]

PREPARED STATEMENT OF CEDRIC W. DEMPSEY

Chairman DeWine and distinguished members of the Anti-Trust, Business Rights and Competition Subcommittee of the Senate Judiciary Committee, good afternoon. I am Cedric W. Dempsey, and I have served as executive director of the National Collegiate Athletic Association (NCAA) since 1994.

I earned both a bachelor of arts and a master's degree in education at Albion College and a doctorate at the University of Illinois. I have been involved in higher education as a professor, dean, coach and athletics director since 1954, and provided managerial oversight for several Division I–A football programs for 27 years while employed at the University of the Pacific, San Diego State University, the University of Houston and finally the University of Arizona, where I served as the athletics director for the 12 years prior to coming to the NCAA.

I am here today to share with the subcommittee information about the NCAA's role in collegiate regular-season and postseason football. The NCAA is a membership organization of close to 1,000 American colleges and universities that participate in intercollegiate athletics. The primary purpose of the Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body. Activities of the NCAA membership include formulating rules of play for NCAA sports, conducting national championships, adopting and enforcing standards of eligibility, and studying all phases of intercollegiate athletics. It is my hope this statement will help you to better understand the complex relationship between the NCAA and the Football Bowl Alliance. As you examine the antitrust implications of the current bowl selection process, I believe it is essential that you are aware of the independent nature of the bowls and the minimal role the NCAA plays in the governance of the bowls.

I would like to begin by providing the subcommittee with a brief history chronicling the evolution of postseason intercollegiate football, which I hope will provide a backdrop to today's current practices.

POSTSEASON INTERCOLLEGIATE FOOTBALL: 1894 TO 1997

The NCAA was formed in 1906 (then known as the Intercollegiate Athletic Association of the United States) as a result of President Theodore Roosevelt's concerns about the alarming number of injuries and deaths in college football. A special Presidential task force was formed to consider either abolishing college football or establishing rules for greater safety.

The first bowl game reportedly occurred before the NCAA was formed in 1906. Alonzo Stagg invited the University of Notre Dame to play the University of Chicago in 1894 to generate civic support for his team.

Apparently, there was not another postseason game until 1902, when the University of Michigan and Stanford University played in the first Rose Bowl. The second Rose Bowl, featuring Washington State University and Brown University, was not played until 1916. The bowl affectionately known as the "Granddaddy" of all bowls just completed its 83rd consecutive game.

In addition to the Rose Bowl, three other bowl games were played during the 1920s. Centre College played Texas Christian University in the Ft. Worth Classic in 1921 and Texas A&M in the Dixie Classic in 1922. Centre also played the University of Arizona in the 1921 San Diego East-West Classic, and Gonzaga University competed against West Virginia University in that bowl the following year. The University of Southern California defeated the University of Missouri in the 1924 Los Angeles Christmas Festival.

There were a proliferation of postseason benefit games specially scheduled at the conclusion of the regular season during the Great Depression (principally in 1931)

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to raise money for relief of the unemployed in response to the President's Committee on Mobilization of Relief Resources and for other charitable causes.

The exact number of these games is unknown, but it is estimated that more than 100 postseason college games were played nationwide during this period, often without regard to the competing teams' regular-season record.

Most notable among these postseason games were the Tennessee-New York University game of 1931 and the Army-Navy contests of 1930 and 1931 (the two academies severed athletics relations during 1928–31 and did not meet in regular-season play). All three games were played before huge crowds in New York City's Yankee Stadium.

The beginning of the modern bowl era began with the birth of the Orange and Sugar Bowls in 1935. The Sun and Cotton Bowls were played for the first time in 1936 and 1937, respectively, and New Year's Day became the primary date for postseason competition. These games were conceived much for the same reason that coach Stagg invited the Fighting Irish to play his Maroons in 1894—cities wanted to attract tourists to warm climates, especially those who resided in states that experienced severe winter seasons.

Up to this point, the NCAA had no direct oversight responsibility over the bowl games. An Extra Events Committee (later renamed the NCAA Special Events Committee) was created in 1951, and it established revenue distribution guidelines and limited participation requirements (one postseason game per year, per team). In 1951, legislation was enacted by the NCAA membership to require NCAA certification of bowl games in which NCAA member institutions would participate. Additional certification criteria also has been developed over a period of years through legislation adopted by the NCAA membership.

The NCAA Football Records book includes information dating back to 1902 on 18 current and 27 former bowl games. Following the 1997 football season, there will be 20 bowl games played, and it is likely that at least one other postseason contest will be approved for the 1998 season.

The NCAA has sponsored football championships in all three NCAA divisions for many years, except Division I–A where the NCAA has never been involved in sponsoring postseason events. [Note: Attached as Appendix A is a brief history of the NCAA Divisions I–AA, II and III Football Championships.] However, over the past 20 years, there have been several attempts to interest the NCAA membership in establishing a Division I–A championship.

In 1976, a proposal to establish a Division I–A football championship was introduced on the recommendation of a special committee that had studied the feasibility of a playoff. This proposal, however, was withdrawn and there was no discussion of it on the Convention floor. The University of North Carolina, Chapel Hill, did submit an amendment that would have specified that a playoff, if adopted by the membership, would involve only one game. The amendment was not considered since the original proposal was withdrawn.

Another resolution was introduced at the 1988 Convention that would have attempted to measure the interest of Division I–A members in a national football championship. The Division I–A subcommittee of the NCAA Presidents Commission convened in September prior to the January Convention specifically to consider this proposal. The minutes of that meeting report that the group expressed firm opposition. The Division I–A delegates at the Convention subsequently opposed this action with 98 yeas, 13 nays and one abstention.

The NCAA Special Committee to Study a Division I–A Football Championship, the last such group to review the subject in depth, concluded in 1994 that while there was merit to the concept of a playoff, it could not at that time recommend specific legislation to the NCAA Presidents Commission. The committee did propose further study of specific issues that time constraints had prevented the group from addressing, but the Presidents Commission accepted the report without authorizing continued study.

A new, more limited examination of the subject is underway today. I will explain more about the current discussion later in this statement.

ROLE OF THE NCAA IN CERTIFYING POSTSEASON FOOTBALL COMPETITIONS

The NCAA has the minimal role of certifying all football bowl games. This relationship is based on an evolving cooperative relationship, not a legal binding arrangement. The NCAA Special Events Committee, as it exists today under the current NCAA structure, was formed in 1987. (It was preceded by the Postseason Football Committee, established in 1981 and before that, the Extra Events Committee established in 1951.) It comprises representatives of 17 Division I postsecondary institutions. The committee has had the broad responsibility of certifying postseason football games, all-star games and exempted events that meet specific legislative requirements relating to maximum-contests limitations.

The nine Division I–A members of the Special Events Committee form a subcommittee charged specifically with the oversight of all postseason football games. This subcommittee is responsible for: developing administrative bowl policies, which include establishing criteria for defining the minimum standard for the designation of a "deserving winning team" designating appropriate awards for the student-athletes participating in the bowl games; drug testing; medical examination and insurance requirements; determining ticket administration policies; assignment of officials; approving dates for visits to the campuses of prospective participants by representatives of sponsoring organizations; and the development and collection of game reports that must be completed by athletics directors and referees following the game.

In addition, the certification process for bowl games includes the review of extensive financial commitment documents provided by the organizing sponsors of these events. For example, all first-time bowl sponsoring organizations must secure a minimum $1.5 million letter-of-credit and provide details of other revenue sources. Sponsoring organizations must agree to adhere to specific policies established by the NCAA Council (the NCAA's governing board until August 1997) and stipulated in all initial and recertification applications. [Note: Attached as Appendix B are the requirements governing bowl game initial certification and recertification, the required financial reporting form, and the definition for the components of gross receipts.]

The subcommittee also: (1) stipulates financial requirements that establish a minimum guarantee that sponsors must distribute to the participating teams, (2) defines the components of gross receipts and the allocation of those revenues, (3) confirms loss-of-income insurance coverage by the sponsor, and (4) reviews NCAA-administered audits each year of five randomly selected bowls.

The subcommittee meets annually with representatives of each certified bowl to review policies related to: game management, officiating, student-athlete experience, financial stability, changes in revenue sources, name changes, game times, financial reports, new certified bowls and issues that are developed by the Football Bowl Association. The review is based on reports submitted to the subcommittee by the participating institutions and officiating crews, and the ticket report and financial statements provided by the sponsoring organization. The subcommittee members also meet with the entire membership of the Football Bowl Association to discuss any actions that will be recommended to the NCAA Council and receive feedback in an open forum for bowl-related issues under consideration by the Special Events Committee.

The bowl sponsoring organizations are independent entities who own all property rights to their respective bowls and are not members of the NCAA. However, through an evolving historical relationship based on cooperation, the NCAA continues to carry forward the Association's fundamental purposes, traditions and policies in a minimal oversight capacity of the bowl games. For example, the NCAA's postseason football subcommittee ensures that the Association's rules of regular-season play are followed, protects student-athletes and institutions from exploitation, and guarantees that NCAA member institutions are compensated fairly for their participation in postseason play. However, the NCAA does not have the authority to limit the number of games played on a certain date or at a specific time, nor do we have jurisdiction over team selections or in negotiating television and other marketing contracts for a bowl because of the private, independent nature of the bowls.

THE NCAA'S FUTURE ROLE IN POSTSEASON FOOTBALL

As I briefly referenced earlier, a Special NCAA Committee to Study a Division I–A Football Championship, which included representation from university presidents, athletics directors, senior women athletics administrators, conference commissioners, faculty athletics representatives and coaches, was formed in 1993 to study and develop national championship formats for presentation to the NCAA Presidents Commission (an NCAA governing body comprised of college and university presidents from all NCAA divisions).

Dr. Charles Young, chancellor of the University of California, Los Angeles, chaired the special committee. Special consultation meetings were held with network television executives, coaches selected by the American Football Coaches Association, media representatives, and selected student-athletes representing Division I–A and Division I–AA institutions.

In June 1994, the special committee presented an interim report to the NCAA Presidents Commission. The report provided preliminary recommendations and urged that the special committee be continued for the duration of that year to further study specific issues that had been identified.

The special committee was continued and devoted a substantial amount of time and effort to identifying what effect a postseason football championship would have on bowl games and the welfare of student-athletes. Included were concerns about additional time demands, final examination schedules, the length of the season and ways in which student-athletes might receive direct benefits in addition to athletics scholarships. It was the special committee's sense that these issues, and others related to revenue distribution, championship format and relationships with bowl sponsors, would require satisfactory resolution before it could make specific recommendations to the NCAA Presidents Commission.

The special committee concluded that the Division I–A football championship concept had merit, but requested additional time for a task force to develop possible approaches to addressing the issues identified by it and to conduct additional discussions with student-athletes, coaches, the membership and other interested groups.

The Presidents Commission accepted the special committee's report, but it declined to authorize and recommend further work by the group. Soon thereafter, the special committee was disbanded.

Most recently, at a January 12, 1997, meeting, the Presidents Commission adopted a resolution recommending that the newly created NCAA Division I Board of Directors (which takes the place of the current Presidents Commission when it dissolves in August 1997) conduct a study of postseason football. The Division I Board of Directors accepted this recommendation and authorized its chair, Kenneth A. Shaw, chancellor of Syracuse University, to work with the staff to develop an analysis of the Division I–A postseason football issue.

In this discussion, it is only fair to say that there continues to be opposition to any movement toward a NCAA Division I–A football championship by a majority of our membership. Concern has been expressed, for example, about potential negative effects: disruption of student-athletes' academic calendars, lengthening the season, increased pressures to win. Additionally, many football coaches, college and university presidents, and conference commissioners have not been interested in creating any type of postseason playoff structure that could have a negative effect on the bowl games that are played each year.

A new NCAA governance structure becomes effective in August of this year. Part of the new structure is a Football Issues Committee, which will assume responsibilities previously held by the Special Events Committee, and it will comprise a representative from each Division I–A conference. Following the June meeting, the Board of Directors is expected to indicate if it has an interest in expanding the NCAA's current role beyond providing oversight for postseason football. If such a directive is expressed, the Football Issues Committee may be charged with the task of continuing to develop a comprehensive review of the preliminary issues that were raised by the Presidents Commission in its January 1997 recommendation.

I would be pleased to inform the subcommittee of any decision made at the June meeting of the Division I Board of Directors regarding Division I–A postseason football.

CONCLUSION

The formal relationship between the NCAA and the postseason bowls began when the NCAA Extra Events Committee was established in 1951. This relationship has been based on cooperation, rather than a legally binding agreement that gives the NCAA authority over the bowls. The NCAA's minimal oversight role is based on the Association's own fundamental purposes, traditions and policies. The bowls are privately owned entities and are not part of the NCAA membership, even while the teams that play in the bowl games are NCAA members.

The NCAA's role in the governance of bowl games has been defined by its membership, which has directed the NCAA Special Events Committee, postseason football subcommittee, and the Football Issues Committee (starting in August 1997) to certify the bowls on its behalf and to provide our member institutions with minimal protections.

Certification consists of those elements of the NCAA's own mission guaranteeing that: NCAA rules of play are observed, teams meet a minimally acceptable winning-season threshold before being eligible to play in a bowl game, and NCAA student-athletes and member institutions are not exploited.

The NCAA leadership is currently considering a review of this relationship with the possibility that it may recommend an expanded future role for the NCAA in postseason football, but a decision will not be made at least until late June on this matter.

Thank you for inviting me to participate in these discussions today. I will be pleased to entertain any questions that you may have for me at this time.

APPENDIX A

NCAA DIVISIONS I–AA, II AND III FOOTBALL CHAMPIONSHIPS HISTORY

During the past 22 years, Division I–A, Division II and Division III member institutions have each initiated a formal NCAA football championship—as part of the overall program of 81 NCAA championships offered in 32 men's and women's sports.

The Division II and Division III championships were initiated in 1973. The Division I–AA NCAA championship began in 1978.

The current structure of each of these three tournaments is the same: a 16-team/15-game format, scheduled over four consecutive weekends.

Round	Games	Div. I–AA	Div. II	Div. III
First Round	8	4th weekend of November	3rd weekend of November	3rd weekend of November
Quarterfinals	4	1st weekend of December	4th weekend of November	4th weekend of November
Semifinals	2	2nd weekend of December	1st weekend of December	1st weekend of December
Championship	1	3rd weekend of December	2nd weekend of December	2nd weekend of December

The selection of teams for the 16-team brackets is performed by an NCAA sports committee for each of the three divisions. The bracket includes automatic qualifying conferences and at-large teams.

Division I–AA

This championship began in 1978 as a single-elimination, four-team tournament. It was expanded to eight teams in 1981, each played in four quarterfinal games. The bracket was expanded to 12 teams the following year, the top four-seeded teams received byes, and the other eight teams played four first-round games. The championship was expanded to its current structure of 16 teams in 1986. Each team plays a first-round game. Six conference champions receive automatic qualification. The remaining 10 teams are selected at-large by the NCAA Division I–AA Football Committee.

The Division I–AA championship game was televised by CBS until 1995. It currently is televised by ESPN.

Division II

This championship began in 1973 as a single-elimination for eight teams. The bracket was increased to its current format of 16 teams in 1988. There are no automatic qualifiers, all are selected at large by the NCAA Division II Football Committee.

Prior to 1973, four regional bowl games were played in order to provide postseason competition for those institutions then designated college division.

The Division II championship game is telecast by ESPN.

Division III

This championship began in 1973 as a single elimination for four teams. The bracket changed to eight teams in 1975, and was increased to its current format of 16 teams in 1984. There are no automatic qualifiers, all are selected at-large by the NCAA Division III Football Committee.

Prior to 1973, two regional bowl games were played in order to provide postseason competition for these institutions.

The championship game is telecast by ESPN.

NCAA Legislative Requirements and Policies Applicable to Sponsoring Agencies Seeking Initial Certification of a Postseason Football Game

The NCAA Special Events Committee is responsible for issues involving postseason football contests and college all-star football and basketball contests.

A member institution shall not participate in any noncollegiate or nonconference-sponsored postseason football game unless it has been certified by the Special Events Committee and satisfies the provisions of NCAA bylaws.

The eligibility rules governing individual participation and drug usage shall be as demanding for participants in postseason bowl games as those governing participation in NCAA championships.

The competing institutions shall be active members of the Association, and Division I members shall conduct their intercollegiate athletics programs in conformance with the requirements for institutional eligibility set forth in NCAA bylaws.

Any sponsoring agency seeking certification for a postseason football bowl game shall adhere to the NCAA constitution, bylaws and executive regulations and other policies established by the Special Events Committee.

A. NCAA Constitution.

1. Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.
2. The conditions under which postseason competition occurs shall be controlled to assure that the benefits inherent in such competition flow fairly to all participants, to prevent unjustified intrusion on the time student-athletes devote to their academic programs, and to protect student-athletes from exploitation by professional and commercial enterprises.

B. NCAA Bylaws and Executive Regulations.

1. **Certification Contract.** Management of each postseason bowl game enters a contractual agreement through the NCAA certification program. This agreement stipulates that the bowl management agrees to comply with the NCAA's principles for the conduct of intercollegiate athletics, as set forth in Constitution 2 and relevant bylaws and interpretations, and with other policies adopted by the Special Events Committee.
2. **Participation Restrictions.** The competing institutions shall be active members of this Association, and a member institution shall not participate in more than one such game during any academic year.
3. **Application Review.** The application for the inauguration of a contest will be received from a proposing sponsor only at the annual late spring/early summer meeting of the Special Events Committee. The report shall be received at the NCAA national office by mail or fax not later than January 15. Any application received after that date must be postmarked not later than January 10. The committee will approve or disapprove the contest at its annual late spring/early summer meeting held during the next calendar year.
4. **Projected Financial Report.** The proposing sponsor shall submit to the committee, with its application form, a projected financial report showing financial soundness of the proposed game.
5. **Audits.** The NCAA, or representatives designated by it, shall conduct audits of the financial information of an agency sponsoring a bowl game and other organizations and activities affiliated with it. Audits will be conducted in the summer and will review the immediate past game. Each sponsoring agency shall be audited once every three years. Any expense incurred by bowl management's auditing firm in connection with the NCAA audit shall be at the expense of the sponsoring agency.
6. **Certification Period.** A certified game shall be held in the academic year for which it is certified; otherwise, the certification lapses.
7. **Game Titles.** The titles of certified postseason football contests shall conform to the NCAA's policy of not advertising or appearing to promote products or activities that may be detrimental to the welfare of student-athletes or the image of higher education and intercollegiate athletics. Such titles shall not include reference to the following: alcoholic beverages; cigarettes, smokeless tobacco or other tobacco products; professional sports organizations; and organizations promoting gambling. Titles also shall not contain names popularly associated with such products or organizations.
8. **Date, Time, Name and Site Changes.** The date, time, name and site of a certified game, as represented by the sponsoring agency in its application, may not be changed without the approval of the Special Events Committee.
9. **Final Date.** A certified game shall be played not later than the January 4 immediately after the conclusion of the regular football season.
10. **Deserving Winning Teams.** A contest shall be certified only if it serves the purpose of providing a national contest between deserving winning teams. A "deserving winning team" is defined as one that has won a minimum of six games against Division I-A opponents and whose record includes more wins than losses. A tie does not count as one-half of a win or loss in determining a team's record.
11. **Official Invitation.** An official invitation to participate in a certified postseason bowl game shall

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be issued in writing from the executive director of the sponsoring agency to the institution's director of athletics, who shall send to the executive director written confirmation of the acceptance of the invitation.

12. **Ticket Requirements.** Each sponsoring organization must reserve one-sixth of the total seats available in the stadium for each participating institution. The institution shall determine the number of tickets that it shall be responsible for purchasing and, once claimed, shall notify the management of the certified game, no later than noon (institution's time) on December 1 or one week after the institution has been invited or qualifies by contract to participate in a bowl, of the total number of tickets for which it shall become financially responsible.

    If an institution wishes to purchase more than one-sixth of the tickets available in the stadium, the chief executive officer of the institution must submit a written request for an exception to this policy from the committee, stipulating that the additional tickets will be purchased at face value by constituents of that institution.

    All tickets shall be accounted for at face value and are a part of gross receipts. The sponsoring agency shall sell at face value 50 percent of the total tickets sold for the game, less those assigned to the participating institutions. The sponsoring agency of a bowl shall average selling 25,000 tickets, or 50 percent of those available for sale in the stadium, over a three-year period, unless the committee grants it a waiver to meet the demands of the participating institutions.

13. **Components of Gross Receipts.** The gross receipts shall include all revenues derived from the game, including:
    (a) Sale of tickets (less applicable taxes, except those paid as stadium-use taxes for rental or cost of permanent equipment, or in lieu thereof). All tickets, including those provided for the participating student-athletes, shall be accounted for at face value and shall become a part of the gross receipts;
    (b) Membership fees/dues;
    (c) Concessions;
    (d) Programs, except when the printing and sale of programs or the production and sale of concession items are performed by an independent third party under contract with the sponsoring agency and it receives only a share of the net receipts. Gross receipts then shall include only the net amount received for such items by the sponsoring agency from the third party;
    (e) Advertising (programs, radio, television, video, tickets);
    (f) Radio, unless the official stations of the participating institutions are permitted to originate the broadcast to their normal outlets;
    (g) Television, pay-per-view and movie/video rights;
    (h) Title sponsorships;
    (i) Merchandising sales and licensing fees;
    (j) Interest income;
    (k) Corporate sponsors/contributions; and
    (l) Any other income derived from the operation of the game, including affiliated events, multibowl promotional activities, corporate sponsorship revenues and "gifts in kind" as identified by the committee.

14. **Deductions From Gross Receipts.** The following expenses incurred by the sponsoring agency of a postseason football game may be deducted from gross receipts:
    (a) Letter of credit required for recertification;
    (b) Annual certification fee paid to the Association;
    (c) Radio income if the official station and/or network of each participating team was permitted to purchase origination rights to the bowl game;
    (d) Corporate sponsor receipts that are for the direct benefit of the competing institutions (e.g., luncheon for players);
    (e) Any other special deduction(s) authorized by the committee; and
    (f) Pro rata share of expenses for multibowl promotional activities approved in advance by the committee.

15. **Radio Income.** Radio policies have been developed to govern the origination of radio broadcasts by the official station/network of a participating institution. Radio income may be deducted from gross receipts when a sponsoring agency agrees to implement the suggested radio policies and permits the originating station/network of the participating institution to originate the radio broadcast of the bowl.

16. **Competing Institutions' Percentage of Gross Receipts.** In accordance with NCAA bylaws, institutions competing in such contests shall receive not less than 75 percent of the gross receipts or not less than $750,000 for each participating institution, whichever is greater. The amount shall be divided equally between the institutions. Out of this percentage of gross receipts, each institution may be required to pay its own transportation and other team expenses incidental to the game.

17. **Letter of Credit.** An agency that wishes to sponsor a postseason football contest must secure a $2 million irrevocable letter of credit from a United States financial institution that is payable to the NCAA. The letter shall be in effect from the time the agency submits its initial application to the Special Events Committee until it is replaced after certification by a new letter of credit guaranteeing the revenues that will be distributed to the participating teams, plus an additional 25 percent to cover expenses related to game management, operations and administration.

18. **Insurance.** The management of each certified game shall submit to the NCAA national office, not later than 60 days before the game, the

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appropriate certification of insurance showing evidence that it maintains primary comprehensive general coverage listing the NCAA as an additional insured, with combined single limits of at least $1 million for bodily injury and property damage.

In order for an institution to be eligible to participate in a postseason football game, it shall demonstrate evidence that it has the following:

(a) Basic accident-medical insurance for each participating student-athlete in the amount of $25,000 per injury;

(b) Catastrophic-injury medical insurance for each participating student-athlete that provides lifetime medical, rehabilitation and disability benefits in excess of the basic coverage, equal to the NCAA-sponsored program or an alternate program approved by the Special Events Committee; and

(c) Coverages in (a) and (b) above shall be in effect while the participating student-athletes are traveling to and from the bowl-game site and while they are in the host city.

19. **Loss-of-Income Insurance.** The management of each certified postseason bowl game annually shall make available loss-of-income insurance for a participating team to purchase at its option and expense, which may be deducted from the respective institution's share of gross receipts. This expense shall not be deducted from total gross receipts.

20. **Awards.** Each participating institution shall receive a minimum of 95 awards from the management of the postseason bowl game. The participating institution may purchase additional awards, consistent with the limitations specified in NCAA bylaws. In an effort to reward bowls that provide the maximum value ($300) of gifts to the student-athletes, game management may deduct $25,000 from gross receipts if the committee approves documentation demonstrating that the athletes received gifts valued at approximately $300.

21. **Playing Rules.** The official playing rules of the Association shall govern the conduct of the game, except that the Football Rules Committee has authorized the intermission between halves to extend to 30 minutes and the use of the NCAA tiebreaker if the score is tied after four quarters.

22. **Professional Football.** Individuals who represent professional football teams and leagues shall not be issued press credentials by game management. The logo(s) and/or name(s) of the National Football League and/or a professional team(s) shall not appear on the playing field used for a certified bowl on the day of the game.

23. **Officiating Crews.** The Special Events Committee assigns the officiating crew for each certified bowl game. Except for the Las Vegas Bowl, crews assigned to a bowl game shall be from agencies that do not assign officials for those participating teams during the regular season. Officials shall be nominated by those respective assigning agencies based solely on performance for that season, not as a reward for service. The sponsoring agency shall adhere to all officiating policies approved by the committee.

24. **Penalties for Failure to Comply With Requirements.** If the management of a certified game fails to comply with NCAA bylaws, the requirement for an audited financial report for the immediate past game, and the policies and procedures approved by the Special Events Committee and the NCAA Council, the committee has the option to withhold the certification for the postseason bowl game for one year or fine it a percentage of its gross receipts (per NCAA bylaws), not to exceed 50 percent, from the contest involved in the noncompliance, with the amount to be determined by the committee and approved by the Council. The fine shall be paid directly to the NCAA, which shall forward each participating institution 50 percent of any new revenues received within 10 working days after the financial penalty has been paid.

25. **Radio and Television Promotional Messages.** During radio broadcasts and telecasts of such games, a minimum of 120 seconds shall be reserved, during which promotional messages for the participating institutions, higher education in general, or both, shall be presented. The NCAA shall receive 60 seconds of promotional time. Each participating institution shall receive a 30-second position in the telecast in which it is a participant to air its promotional message.

26. **Lotteries.** A title sponsorship for a bowl game cannot include a lottery. Revenues generated from legal lotteries may be used in other bowl-related activities at the discretion of bowl management.

27. **Gambling.** Game management shall not accept any sponsorship(s) for any game-related activity from any organization engaged in gambling activities. There should be no direct or implied relationship between gambling interests and the conduct of bowl games.

28. **Corporate Sponsorships.** Institutions traditionally determine the products, equipment and supplies used by their student-athletes, trainers, managers and staff in the team area of the field and in the locker room.

The sponsoring agency of each bowl should be aware that institutions may have contracts involving the use of such equipment and supplies during all games in which the institution participates.

If a participating institution has any contracts relating to the use of such products, equipment or supplies during bowl games, the participating institution, before accepting a bowl invitation, should make inquiry of the sponsoring agency concerning the latter's potential conflicts with the institution's use of such products, equipment or supplies in connection with the bowl to prevent any misunderstanding and eliminate conflicts among the institution, the sponsoring agency and third parties.

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29. **Pregame Meeting.** The athletics director and/or designee(s), head coach or full-time assistant, sports information director, and band director of each participating institution; the game referee and clock operator(s); and a representative(s) of the television network or syndicator that has been granted live rights to the game shall attend a pregame meeting on the day before the bowl game. The postseason football game's executive director will review administrative and procedural details and the television format for the game. When an institutional representative (director of athletics or designee, head coach or designee, sports information director, or band director) does not attend the pregame meeting, the sponsoring agency shall withhold $1,000 from the institution's share for each person not in attendance.

    If the sponsoring agency fails to notify the institution with details regarding the mandatory meetings, or if it fails to administer such meetings in a manner that will involve review of each of the agenda items approved by the committee and included in its handbook, bowl management will be subject to a $4,000 financial penalty from the committee.

30. **Certification Fee.** Each certified postseason bowl game shall pay annually, upon notice of certification, a $12,000 fee to the Association. This fee is a permissible deduction before identifying total gross receipts.
31. **Committee Authority.** Bowl management shall acknowledge that the committee has the authority to review any document related to the bowl game, which would include title and other corporate contracts and any television contract(s).
32. **Institutional Eligibility—Written Report.** The director of athletics of a member institution that participates in a postseason bowl game will, by the following February 1, submit to the Special Events Committee a written report on the conduct and administration of the event, which shall have special emphasis on game management.
33. **Standardized Information Form.** Game management shall provide a standardized information form to the director of athletics of any team under consideration to receive an invitation to participate in its bowl. The form shall include a master schedule and a list of social events available, which would include the number of complimentary admissions and the cost and number of additional tickets the institution may purchase.
34. **Annual Committee Meeting.** A representative of each bowl seeking initial certification shall attend the late spring/early summer meeting of the Special Events Committee as a condition of the certification process.

C. Initial Bowl Application Form.

A sponsoring agency requesting initial certification also must meet these additional requirements that are included on the application form. It shall:

1. List all personnel who will serve on the game's governing board or management committee;
2. Provide evidence of the experience or association that management personnel has had with collegiate football;
3. Demonstrate the financial ability of management or the sponsoring agency to guarantee the success of the game. It shall include a $2 million letter of credit issued by a United States financial institution and payable to the NCAA, which shall be in effect from the time the initial application for certification is submitted to the committee until it is replaced after certification by a letter of credit guaranteeing the minimum revenues that will be distributed to the participating teams and an additional 25 percent for game-management, operational and administrative expenses;
4. Identify the amount of money on hand or to which there is access to guarantee game and team expenses;
5. Estimate the total gross receipts to be realized from the game;
6. Detail proposals for promoting the game;
7. Provide plans for selling tickets, identify the number of tickets, if applicable, and demonstrate its understanding that the bowl will be ineligible for recertification should it fail to average selling 25,000 tickets, or 50 percent of those available for sale in the stadium, over a three-year period, unless the committee grants it a waiver to meet the demands of the participating institutions;
8. Name the charitable or educational purpose(s) for which the game will be conducted;
9. Indicate the type of institutions that will be invited to participate;
10. Provide evidence of the experience of the sponsoring group in conducting such games or similar affairs;
11. Indicate plans for television and radio coverage;
12. Submit the organizational operating structure, including a chart or diagram, with an indication of the extent of active community involvement in game promotion and management;
13. Provide letters recommending certification of the bowl game signed by 25 Division I-A athletics directors and/or conference commissioners who represent institutions that have participated in bowl games at least one time in the previous five years; the letters shall not represent more than one-half of the institutions within any single conference or the membership of the committee;
14. Certify that the stadium has a minimum seating capacity of 50,000, and any other pertinent information or comments; and
15. Acknowledge that the Special Events Committee has the authority to review any document related to the bowl game, which would include title and other corporate contracts and any other television contract(s).

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The National Collegiate Athletic Association Application for Initial Certification of a Postseason Football Contest

Must Be Returned to the NCAA by January 15

1. Name of game ______________________ Date requested ____________

2. Site of game ______________________ Time requested ____________
City State Eastern Time

3. Name of sponsoring organization ______________________

4. Name of executive director ______________________

Telephone:
Mailing address ______________________ Business ______ / ____________
Street (AC)
______________________ Home______ / ____________
City State ZIP Code (AC)

5. Other executive officers (titles) of sponsoring organizations:

Name ______________________

Name of business and position ______________________

Name ______________________

Name of business and position ______________________

Name ______________________

Name of business and position ______________________

6. Name of stadium______________________ Seating capacity ____________

7. Number of tickets to be made available to participating institutions ____________

8. Please explain the basis for determining stadium rental (flat fee, percentage, tax, etc.); include an estimate of the total cost, and specify the source of funds for payment.

____

____

____

9. Explain the policy on the issuance of complimentary tickets and indicate the number to be issued.

____

____

____

10. Attach a projected financial report for the first game.

11. A minimum amount of $ ______________ will be paid by the applicant to each participating institution in the first year of certification. [Note: This amount shall not be less than $750,000 unless a special waiver has been approved for a closed game.] List all anticipated sources of income and amounts for the following:

A. Ticket sales ______________ $ ______________

B. Television rights ______________ $ ______________

C. Radio rights ______________ $ ______________

D. Title sponsorship ______________ $ ______________

E. Other corporate sponsorships ______________ $ ______________

F. Merchandising and licensing ______________ $ ______________

12. Will participating institutions be charged for items before the determination and/or distribution of total gross receipts?

Yes ______ No ______ If yes, please explain. ______________

13. Will there be a relationship between income and expenses realized from the game and related activities (parade, pageant, meets and tournaments, etc.)?

Yes ______ No ______ If yes, please explain. ______________

14. Provide details for a commitment to televise your game from a national network or syndicator, describing specifically the amount of television rights fees to be paid, the geographical areas to be covered by the telecast and the stations or cable outlets expected to carry the telecast.

A. National network/syndicator ______________

B. Financial value each year of the commitment ______________

C. Areas of coverage by the syndicator ______________

15. Detail the sources of radio income. ______________

16. Will your bowl permit the official station/network of a participating institution to originate the game broadcast and distribute it to the same stations that were a part of its radio network during the season? Yes ______ No ______

17. If no, please explain. ______________

18. Does your bowl have a commitment from a title sponsor for your game? Yes ______ No ______

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19. If yes, please identify the title sponsor. ______________________________

20. What is the financial value each year of the title sponsorship for your game? ______________

21. Does your bowl have other corporate partnerships with a minimum annual value of $20,000? Yes ______ No ______

If yes, provide the financial value each year for each partner. ______________________________

____

22. Does your bowl agree to provide each team a minimum of 95 awards? Yes ______ No ______

23. Will your bowl provide awards for the student-athletes that are approximately $300 in value? Yes ______ No ______

24. List all awards, gifts, mementos or other items that will be presented to individual participants, and indicate the number and value of each item.

____

____

____

25. Will management present an award in recognition of an individual's performance in the game?
Yes ______ No ______ If yes, please provide the value. $ ______________________________

26. Will your bowl comply with the NCAA's principles for the conduct of intercollegiate athletics, as set forth in NCAA Constitution 2 and relevant bylaws and interpretations, and with the restrictions on game negotiations in Bylaw 18?
Yes ______ No ______

27. Will the game serve the purpose of providing a national contest between deserving winning teams that each had a minimum of six wins against Division I-A competition? Yes ______ No ______

28. Will the competing institutions be active members of the Association? Yes ______ No ______

29. Did your bowl submit a projected financial report to the NCAA Special Events Committee? Yes ______ No ______

30. Will competing institutions in your game receive not less than 75 percent of the gross receipts or not less than $750,000 each? Yes ______ No ______ What amount? $ ______

31. Will your bowl secure not later than November 1 an irrevocable $2 million letter of credit guaranteeing the minimum distribution fee and replace the initial letter-of-credit requirement? Yes ______ No ______ When will the NCAA receive it? ______________________________

32. Does your bowl understand that the certification lapses if the bowl is not held in the year for which it is certified?
Yes ______ No ______

33. Will your television and radio contract(s) reserve 120 seconds for promotional and higher education messages provided by the NCAA (60 seconds) and the participating institutions (30 seconds each)? Yes ______ No ______

34. Does your bowl agree to conform to the NCAA's policy of not advertising or appearing to promote products or activities that may be detrimental to the welfare of student-athletes or the image of higher education and intercollegiate athletics? Yes ______ No ______

35. Does your bowl agree that the date, time, name and site cannot be changed once the game is certified without approval of the NCAA? Yes ______ No ______

36. Will your bowl adhere to all officiating policies that are adopted by the Special Events Committee?
Yes ______ No ______

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37. Does your bowl understand the penalties for failure to comply with NCAA legislation and policies governing postseason football games? Yes ______ No ______

38. Will your bowl submit to the NCAA national office, not later than 60 days before the game, the appropriate certification of insurance showing evidence that it maintains primary comprehensive general coverage listing the NCAA as an additional insured with combined single limits of at least $1 million per occurrence for bodily injury and property damage? Yes ______ No ______

39. Will your bowl pay a $12,000 fee to the NCAA upon notice of certification? Yes ______ No ______

40. Will game management prepare a standardized information form to distribute to potential participating institutions? Yes ______ No ______

Your application should be received at the NCAA national office by mail or fax transmission not later than January 15.

Initial Bowl Application Form

The sponsoring agency also must meet these additional requirements for initial certification that are included on the application form. Please submit evidence of the following:

(a) List all personnel (occupation and position) who will serve on the game's governing board or management committee:

(b) Provide evidence of the experience or association that management personnel has had with collegiate football:

(c) Demonstrate the financial ability of management or the sponsoring agency to guarantee success of the game. This includes securing a $2 million letter of credit issued by a United States financial institution and payable to the NCAA, which shall be in effect from the time the initial application for certification is submitted to the Special Events Committee until it is replaced after certification by a subsequent letter of credit guaranteeing the minimum revenues that will be distributed to the participating teams and an additional 25 percent for game-management, operational and administrative expenses.

(d) Identify the amount of money available to which there is access to guarantee game and team expenses:

(e) Estimate the total gross receipts to be realized from the game:

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(f) Detail proposals for promoting the game:

(g) Provide plans for selling tickets; identify the number of tickets; and demonstrate management's understanding that the bowl will be ineligible for recertification should it fail to average selling 25,000 tickets, or 50 percent of those available for sale in the stadium, over a three-year period, unless the committee grants it a waiver to meet the demands of the participating institutions.

(h) Name the charitable or educational purpose(s) for which the game will be conducted:

(i) Indicate the type of institutions that will be invited to participate:

(j) Provide evidence of the experience of the sponsoring group in conducting such games or similar affairs:

(k) Indicate plans for television and radio coverage:

(l) Submit the organization operating structure, including a chart or diagram with an indication of the extent of active community involvement in game promotion and management:

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(m) Letters are attached recommending certification of the game that have been signed by 25 Division I-A athletics directors and/or conference commissioners who represent institutions that have participated in bowl games at least one time in the previous five years; the letters do not represent more than one-half of the institutions within any single conference, nor the membership of the Special Events Committee. Yes ______ No ______

(n) Will the stadium have a minimum seating capacity of 50,000? Yes ______ No ______

Game management acknowledges that the Special Events Committee has the authority to direct the management or sponsoring agency to submit additional evidence, and/or independent audits, to demonstrate its ability to guarantee the financial success of the game. Yes ______ No ______

The undersigned hereby certifies that the foregoing application has been truly and fully completed and that the application provisions of the NCAA constitution, bylaws and executive regulations, and the policies adopted by the Special Events Committee, are understood. The undersigned also is duly authorized to submit this application for certification on behalf of the sponsoring organization and, on its behalf, agrees that if this game is certified, it will be conducted in full accordance with the attached provisions; that it acknowledges that the Special Events Committee has the authority to review any document related to the bowl game, which would include title and other corporate contracts and television contracts; that the NCAA, or representatives designated by it, may conduct audits of any agency sponsoring a bowl game and other associations and activities affiliated with it; and that this organization will fully observe and cooperate in the enforcement of all rulings of the NCAA Council, Convention or committees, which render an NCAA institution or student-athlete ineligible to compete in postseason football contests. It further is understood and agreed that any violation of the attached provisions may disqualify the game from future certification.

Signed ______________________________ Title ____________________

Organization ____

Address ____
Street

____
City State ZIP Code

Telephone - Office ________ / ____________ Home ________ / ____________
(AC) (AC)

Date ____________________

- -

Return to:
David E. Cawood
National Collegiate Athletic Association
6201 College Boulevard
Overland Park, Kansas 66211-2422
Telephone: 913/339-1906
Fax: 913/339-0027

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NCAA Legislation Requirements and Policies Applicable to Sponsoring Agencies Seeking Recertification of a Postseason Football Game

The NCAA Special Events Committee is responsible for issues involving postseason football contests and college all-star football and basketball contests.

A member institution shall not participate in any noncollegiate or nonconference-sponsored postseason football game unless it has been certified by the Special Events Committee and satisfies the provisions of NCAA bylaws.

The eligibility rules governing individual participation and drug usage shall be as demanding for participants in postseason bowl games as those governing participation in NCAA championships.

The competing institutions shall be active members of the Association, and Division I members shall conduct their intercollegiate athletics programs in conformance with the requirements for institutional eligibility set forth in NCAA bylaws.

Any sponsoring agency seeking recertification for a postseason football game shall adhere to the NCAA constitution, bylaws and executive regulations and other policies established by the Special Events Committee.

A. **NCAA Constitution.**

1. Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.
2. The conditions under which postseason competition occurs shall be controlled to assure that the benefits inherent in such competition flow fairly to all participants, to prevent unjustified intrusion on the time student-athletes devote to their academic programs, and to protect student-athletes from exploitation by professional and commercial enterprises.

B. **NCAA Bylaws and Executive Regulations.**

1. **Certification Contract.** Management of each postseason bowl game enters a contractual agreement through the NCAA certification program. This agreement stipulates that the bowl management agrees to comply with the NCAA's principles for the conduct of intercollegiate athletics, as set forth in Constitution 2 and relevant bylaws and interpretations, and with other policies adopted by the Special Events Committee.
2. **Participation Restrictions.** The competing institutions shall be active members of this Association, and a member institution shall not participate in more than one such game during any academic year.
3. **Application.** Applications for recertification shall be received by the Special Events Committee not later than April 1.
4. **Audited Financial Report.** An audited financial report of the immediate past game must be submitted to the NCAA before an ensuing contest will be certified. It shall be received at the NCAA national office by mail or fax not later than April 1. Any application or financial report received after that date must be postmarked not later than March 25. A final supplemental audited report shall be submitted to the Special Events Committee not later than September 1.
5. **Audits.** The NCAA, or representatives designated by it, shall conduct audits of the financial information of an agency sponsoring a bowl game and other organizations and activities affiliated with it. Audits will be conducted in the summer and will review the immediate past game. Each sponsoring agency shall be audited once every three years. Any expense incurred by bowl management's auditing firm in connection with the NCAA audit shall be at the expense of the sponsoring agency.
6. **Certification Period.** A certified game shall be held in the academic year for which it is certified; otherwise, the certification lapses.
7. **Game Titles.** The titles of certified postseason football contests shall conform to the NCAA's policy of not advertising or appearing to promote products or activities that may be detrimental to the welfare of student-athletes or the image of higher education and intercollegiate athletics. Such titles shall not include reference to the following: alcoholic beverages; cigarettes, smokeless tobacco or other tobacco products; professional sports organizations; and organizations promoting gambling. Titles also shall not contain names popularly associated with such products or organizations.
8. **Date, Time, Name and Site Changes.** The date, time, name and site of a certified game, as represented by the sponsoring agency in its application, may not be changed without the approval of the Special Events Committee.
9. **Final Date.** A certified game shall be played not later than the January 4 immediately after the conclusion of the regular football season.
10. **Deserving Winning Teams.** A contest shall be certified only if it serves the purpose of providing a national contest between deserving winning teams. A "deserving winning team" is defined as one that has won a minimum of six games against Division I-A opponents and whose record includes more wins than losses. A tie does not count as one-half of a win or loss in determining a team's record.
11. **Official Invitation.** An official invitation to participate in a certified postseason bowl game shall be issued in writing from the executive director of the sponsoring agency to the institution's director of athletics, who shall send to the executive

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director written confirmation of the acceptance of the invitation.

12. **Ticket Requirements.** Each sponsoring organization must reserve one-sixth of the total seats available in the stadium for each participating institution. The institution shall determine the number of tickets that it shall be responsible for purchasing and, once claimed, shall notify the management of the certified game, no later than noon (institution's time) on December 1 or one week after the institution has been invited or qualifies by contract to participate in a bowl, of the total number of tickets for which it shall become financially responsible.

    If an institution wishes to purchase more than one-sixth of the tickets available in the stadium, the chief executive officer of the institution must submit a written request for an exception to this policy from the committee, stipulating that the additional tickets will be purchased at face value by constituents of that institution.

    All tickets shall be accounted for at face value and are a part of gross receipts. The sponsoring agency shall sell at face value 50 percent of the total tickets sold for the game, less those assigned to the participating institutions. The sponsoring agency of a bowl shall average selling 25,000 tickets, or 50 percent of those available for sale in the stadium, over a three-year period, unless the committee grants it a waiver to meet the demands of the participating institutions.

13. **Components of Gross Receipts.** The gross receipts shall include all revenues derived from the game, including:
    - (a) Sale of tickets (less applicable taxes, except those paid as stadium-use taxes for rental or cost of permanent equipment, or in lieu thereof). All tickets, including those provided for the participating student-athletes, shall be accounted for at face value and shall become a part of the gross receipts;
    - (b) Membership fees/dues;
    - (c) Concessions;
    - (d) Programs, except when the printing and sale of programs or the production and sale of concession items are performed by an independent third party under contract with the sponsoring agency and it receives only a share of the net receipts. Gross receipts then shall include only the net amount received for such items by the sponsoring agency from the third party;
    - (e) Advertising (programs, radio, television, video, tickets);
    - (f) Radio, unless the official stations of the participating institutions are permitted to originate the broadcast to their normal outlets;
    - (g) Television, pay-per-view and movie/video rights;
    - (h) Title sponsorships;
    - (i) Merchandising sales and licensing fees;
    - (j) Interest income;
    - (k) Corporate sponsors/contributions; and
    - (l) Any other income derived from the operation of the game, including affiliated events, multibowl promotional activities, corporate sponsorship revenues and "gifts in kind" as identified by the committee.

14. **Deductions From Gross Receipts.** The following expenses incurred by the sponsoring agency of a postseason football game may be deducted from gross receipts:
    - (a) Letter of credit required for recertification;
    - (b) Annual certification fee paid to the Association;
    - (c) Radio income if the official station and/or network of each participating team was permitted to purchase origination rights to the bowl game;
    - (d) Corporate sponsor receipts that are for the direct benefit of the competing institutions (e.g., luncheon for players);
    - (e) Any other special deduction(s) authorized by the committee; and
    - (f) Pro rata share of expenses for multibowl promotional activities approved in advance by the committee.

15. **Radio Income.** Radio policies have been developed to govern the origination of radio broadcasts by the official station/network of a participating institution. Radio income may be deducted from gross receipts when a sponsoring agency agrees to implement the suggested radio policies and permits the originating station/network of the participating institution to originate the radio broadcast of the bowl.

16. **Competing Institutions' Percentage of Gross Receipts.** In accordance with NCAA bylaws, institutions competing in such contests shall receive not less than 75 percent of the gross receipts or not less than $750,000 for each participating institution, whichever is greater. The amount shall be divided equally between the institutions. Out of this percentage of gross receipts, each institution may be required to pay its own transportation and other team expenses incidental to the game.

17. **Letter of Credit.** A postseason football contest that has not distributed an average minimum of $1 million to each of the participating institutions during the preceding three-year period shall secure annually an irrevocable letter of credit from a United States financial institution that is payable to the NCAA. Any bowl that has not been certified for three consecutive years shall include in the letter of credit an additional 25 percent to cover expenses related to game management, operations and administration. Bowl management must direct the financial institution that will provide the letter of credit to notify the NCAA by October 1 that it will be issued to the Association by November 1 and received by the NCAA not later than November 15. The letter of credit shall be made payable to the NCAA and annually shall cover the period from November

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1 until notification by the participating institutions that they have received their distribution of receipts, or no later than May 1 each year. The Association is responsible for the distribution of revenues to the participating institutions in the event of default. The cost of the letter of credit shall be deducted from gross receipts.

18. **Insurance.** The management of each certified game shall submit to the national office, not later than 60 days before the game, the appropriate certification of insurance showing evidence that it maintains primary comprehensive general coverage, listing the NCAA as an additional insured, with combined single limits of at least $1 million for bodily injury and property damage.

    In order for an institution to be eligible to participate in a postseason football game, it shall demonstrate evidence that it has the following:

    (a) Basic accident-medical insurance for each participating student-athlete in the amount of $25,000 per injury;

    (b) Catastrophic-injury medical insurance for each participating student-athlete that provides lifetime medical, rehabilitation and disability benefits in excess of the basic coverage, equal to the NCAA-sponsored program or an alternate program approved by the Special Events Committee; and

    (c) Coverages in (a) and (b) above shall be in effect while the participating student-athletes are traveling to and from the bowl-game site and while they are in the host city.

19. **Loss-of-Income Insurance.** The management of each certified postseason bowl game annually shall make available loss-of-income insurance for a participating team to purchase at its option and expense, which may be deducted from the respective institution's share of gross receipts. This expense shall not be deducted from total gross receipts.
20. **Awards.** Each participating institution shall receive a minimum of 95 awards from the management of the postseason bowl game. The participating institution may purchase additional awards, consistent with the limitations specified in NCAA bylaws. In an effort to reward bowls that provide the maximum value ($300) of gifts to the student-athletes, game management may deduct $25,000 from gross receipts if the committee approves documentation demonstrating that the athletes received gifts valued at approximately $300.
21. **Playing Rules.** The official playing rules of the Association shall govern the conduct of the game, except that the Football Rules Committee has authorized the intermission between halves to extend to 30 minutes and the use of the NCAA tiebreaker if the score is tied after four quarters.
22. **Professional Football.** Individuals who represent professional football teams and leagues shall not be issued press credentials by game management. The logo(s) and/or name(s) of the National Football League and/or a professional team(s) shall not appear on the playing field used for a certified bowl on the day of the game.
23. **Officiating Crews.** The Special Events Committee assigns the officiating crew for each certified bowl game. Except for the Las Vegas Bowl, crews assigned to a bowl game shall be from agencies that do not assign officials for those participating teams during the regular season. Officials shall be nominated by those respective assigning agencies based solely on performance for that season, not as a reward for service. The sponsoring agency shall adhere to all officiating policies approved by the committee.
24. **Penalties for Failure to Comply With Requirements.** If the management of a certified game fails to comply with NCAA bylaws, the requirement for an audited financial report for the immediate past game, and the policies and procedures approved by the Special Events Committee and the NCAA Council, the committee has the option to withhold certification of the postseason bowl game for one year or fine it a percentage of its gross receipts (per NCAA bylaws), not to exceed 50 percent, from the contest involved in the noncompliance, with the amount to be determined by the committee and approved by the Council. The fine shall be paid directly to the NCAA, which shall forward each participating institution 50 percent of any new revenues received within 10 working days after the financial penalty has been paid.
25. **Radio and Television Promotional Messages.** During radio broadcasts and telecasts of such games, a minimum of 120 seconds shall be reserved, during which promotional messages for the participating institutions, higher education in general, or both, shall be presented. The NCAA shall receive 60 seconds of promotional time. Each participating institution shall receive one 30-second position in the telecast in which it is a participant to air its promotional message.
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28. **Corporate Sponsorships.** Institutions traditionally determine the products, equipment and supplies used by their student-athletes, trainers, managers and staff in the team area of the field and in the locker room.

    The sponsoring agency of each bowl should be aware that institutions may have contracts involving the use of such equipment and supplies during all games in which the institution participates.

    If a participating institution has any contracts relating to the use of such products, equipment or supplies during bowl games, the participating institution, before accepting a bowl invitation, should make inquiry of the sponsoring agency concerning the latter's potential conflicts with the institution's use of such products, equipment or supplies in connection with the bowl to prevent any misunderstanding and eliminate conflicts among the institution, the sponsoring agency and third parties.

29. **Pregame Meeting.** The athletics director and/or designee(s), head coach or full-time assistant, sports information director, and band director of each participating institution; the game referee and clock operator(s); and a representative(s) of the television network or syndicator that has been granted live rights to the game shall attend a pregame meeting on the day before the bowl game. The postseason football game's executive director will review administrative and procedural details and the television format for the game. When an institutional representative (director of athletics or designee, head coach or designee, sports information director or band director) does not attend the pregame meeting, the sponsoring agency shall withhold $1,000 from the institution's share for each person not in attendance.

    If the sponsoring agency fails to notify the institution with details regarding the mandatory meetings, or if it fails to administer such meetings in a manner that will involve review of each of the agenda items approved by the committee and included in its handbook, bowl management will be subject to a $4,000 financial penalty from the committee.

30. **Certification Fee.** Each certified postseason bowl game shall pay annually, upon notice of certification, a $12,000 fee to the Association. This fee is a permissible deduction before identifying total gross receipts.
31. **Committee Authority.** Bowl management shall acknowledge that the committee has the authority to review any document related to the bowl game, which would include title and other corporate contracts and any television contract(s).
32. **Institutional Eligibility—Written Report.** The director of athletics of a member institution that participates in a postseason bowl game will, by the following February 1, submit to the Special Events Committee a written report on the conduct and administration of the event, which shall have special emphasis on game management.
33. **Standardized Information Form.** Game management shall provide a standardized information form to the director of athletics of any team under consideration to receive an invitation to participate in its bowl. The form shall include a master schedule and a list of social events available, which would include the number of complimentary admissions and the cost and number of additional tickets the institution may purchase.
34. **Annual Committee Meeting.** A representative of each bowl seeking recertification shall attend the late spring/early summer meeting of the Special Events Committee as a condition of the certification process.

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The National Collegiate Athletic Association
Application for Recertification of a Postseason Football Contest

1. Official name of game ____________________ Date requested ____________

2. Site of game ____________________ City ____________ State ____________ Time requested ____________ Eastern Time

3. Year game was founded ____________ Number of games played ____________

4. Name of sponsoring organization ____________________

5. Name of executive director ____________________

Mailing address ____________________ Street

____________ City ____________ State ____________ ZIP Code

Telephone:
Business ____ (AC) / ____________
Home ____ (AC) / ____________

6. Names of other executive officers of sponsoring organization:

President ____________________ Business ___ / ________ Home ___ / ________

President-Elect ____________________ Business ___ / ________ Home ___ / ________

Team Selection Chair ____________________ Business ___ / ________ Home ___ / ________

7. Name of stadium ____________________ Seating capacity ____________

8. How many tickets will be made available to each participating institution? ____________

How many tickets did each purchase last year? ____________

9. Please explain the basis for determining stadium rental (flat fee, percentage, tax, etc.); include an estimate of the total cost, and specify the source of funds for payment.

____

____

____

10. List the price(s) of tickets from last year's game and submit a program.

____

____

____

11. Explain the current taxes on each ticket sale and the reason for each type of tax.

____

____

____

12. Please provide the following information for the immediate past four games, including the most recent bowl played:

Year	Gross Income	Institutional Distribution		Management Retained	
A. ______	$ ______	$ ______	____ %	$ ______	____ %
B. ______	$ ______	$ ______	____ %	$ ______	____ %
C. ______	$ ______	$ ______	____ %	$ ______	____ %
D. ______	$ ______	$ ______	____ %	$ ______	____ %

13. Is a preliminary audited financial report of last year's game attached? Yes ______ No ______ If not, why? ______

14. Will a final audited report be sent to the Special Events Committee not later than September 1?
Yes ______ No ______

15. Has full payment been made to the participating institutions in the previous year's game? Yes ______ No ______

If not, why? ______

16. A minimum of $ ______ will be paid by the applicant to each participant in the next game. [Note: This amount shall not be less than $750,000 unless a special waiver has been approved for a closed game.]

17. Please list all anticipated sources of income and gross amounts for the following:

A. Ticket sales ______ $ ______
B. Television rights ______ $ ______
C. Radio rights ______ $ ______
D. Title sponsorships ______ $ ______
E. Other corporate sponsorships ______ $ ______
F. Merchandising and licensing ______ $ ______

18. Please identify the expenses and amounts deducted from each institution's share of gross income. ______

19. Please identify the number of tickets and value each participating team guaranteed it would sell for your last game.

Team ______ Tickets ______ Value ______
Team ______ Tickets ______ Value ______

20. Please identify gifts-in-kind (and financial value) that directly benefited the participating institutions. ______

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21. Does your bowl have a commitment from a national network or syndicator to televise your next game?
Yes ______ No ______

22. If yes, please identify the network or syndicator. ______________________________

23. Provide the financial value of your television commitment for each year of the contract. ______________________________

____

____

24. Does your bowl have a commitment from a national network or syndicator for radio rights to your next game?

Yes ______ No ______

25. Please identify the network or syndicator. ______________________________

26. Provide the financial value of your radio commitment for each year of the contract. ______________________________

____

____

27. Does your bowl permit the official station and/or network of a participating institution to originate radio coverage of your bowl? Yes ______ No ______

28. Do these rights permit the institution's official outlet to originate the broadcast and distribute it to the same stations that were a part of its radio network during the regular season? Yes ______ No ______

29. If either question No. 27 or No. 28 was answered no, please explain. ______________________________

____

30. Did your television and radio contract(s) reserve 60 seconds for promotional higher educational messages provided by the NCAA? Yes ______ No ______

31. Did your television and radio contract(s) reserve 60 seconds (30 seconds for each institution) for promotional higher educational messages provided by the participating institutions? Yes ______ No ______

32. Does your bowl have a commitment from a title sponsor for your next game? Yes ______ No ______

33. Please identify the title sponsor. ______________________________

34. Provide the financial value of your title sponsorship for each year of the contract. ______________________________

____

____

35. Does your bowl have other corporate partnerships with a minimum annual value of $20,000? Yes ______ No ______

If yes, provide the financial value each year for each contract. ______________________________

____

____

36. Did your bowl provide each participating team a minimum of 95 awards? Yes ______ No ______

37. What was the approximate value of the awards your bowl provided the student-athletes? $ ______________

38. List all awards, gifts, mementos or other items that were presented to individual participants last year, and indicate the number and value of each item. ______________________________

____

____

____

39. Does the management present an award in recognition of an individual's performance in the game?
Yes ______ No ______ (If yes, please provide value. $ __________)

40. Did your bowl adhere to the policies concerning officials (e.g., courtesy automobiles, entertainment, etc.)?
Yes ______ No ______

If no, please explain. ______________________________

____

____

41. Did bowl management conduct a meeting before last year's game involving representatives from the participating institutions, the game referee, clock operator(s) and television network or syndicator for the purpose of reviewing governing game administrative details and NCAA rules and regulations? Yes ______ No ______

42. Did your bowl comply with the NCAA's principles for the conduct of intercollegiate athletics, as set forth in NCAA Constitution 2 and relevant bylaws and interpretations? Yes ______ No ______

43. Was your game held in the academic year for which it was certified? Yes ______ No ______

44. Did your bowl sell, at face value, tickets equaling at least 50 percent of the total tickets sold, excluding those sold by the participating institutions? Yes ______ No ______

If no, explain. ______________________________

45. Has your bowl averaged selling 25,000 tickets, or 50 percent of those available for sale, over the past three years?
Yes ______ No ______

46. Did either participating team purchase more than one-sixth of the tickets available in the stadium?

Yes ______ No ______ If yes, please explain. ______________________________

____

47. Did the Special Events Committee authorize an exception to the ticket-distribution policy for the institution?
Yes ______ No ______

48. Was the date, time, name and/or site of your game, as represented in the application, changed without the approval of the Special Events Committee after the initial certification of the application? Yes ______ No ______

49. Did your bowl serve the purpose of providing a national contest between teams that each had a minimum of six wins against Division I-A competition? Yes ______ No ______

50. Were the competing institutions active members of this Association? Yes ______ No ______

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51. If required of your bowl, will an irrevocable letter of credit guaranteeing the minimum distribution fee be secured?
Yes ______ No ______

If not, why? ____________________

52. Did your bowl submit to the NCAA national office, not later than 60 days before the game, the appropriate certification of insurance showing evidence that it maintains primary comprehensive general coverage listing the NCAA as an additional insured, with combined single limits of at least $1 million per occurrence for bodily injury and property damage?

Yes ______ No ______ If not, why? ____________________

53. Will your bowl pay a $12,000 fee to the NCAA upon notice of certification? Yes ______ No ______

Please attach to this application:

A. A standardized information form distributed to the institutions that participated in the last bowl game,

B. A copy of the letters of invitation to the institutions that participated in the last bowl game,

C. A copy of the letters of acceptance from those institutions that participated in the last bowl game,

D. A copy of your network television contract,

E. A copy of your network radio contract, and

F. A copy of your title and other corporate sponsor contracts valued at a minimum of $20,000 per year.

In reviewing this application, the Special Events Committee may request that the management or sponsoring agency submit additional evidence, and/or independent audits, to demonstrate its ability to guarantee the financial success of the game.

The undersigned hereby certifies that the foregoing application has been truly and fully completed and that the policies of the Special Events Committee and the application provisions of the NCAA constitution, bylaws and executive regulations, and the policies adopted by the committee, are understood. The undersigned also is duly authorized to submit this application for recertification on behalf of the sponsoring organization and, on its behalf, agrees that if this game is recertified, it will be conducted in full accordance with the attached provisions; that it acknowledges that the Special Events Committee has the authority to review any document related to the bowl game, which would include title and other corporate contracts and television contracts; that the NCAA, or representatives designated by it, may conduct audits of any agency sponsoring a bowl game and other associations and activities affiliated with it, and that this organization will fully observe and cooperate in the enforcement of all rulings of the NCAA Council, Convention or committees, which render an NCAA institution or student-athlete ineligible to compete in postseason football contests. It further is understood and agreed that any violation of the attached provisions may disqualify the game from future certification.

Signed ____________________ Title ____________________

Organization ____________________

Address ____________________
Street

____
City State ZIP Code

Telephone - Office ______ / ____________ Home ______ / ____________
(AC) (AC)

Date ____________________

Return to:
David E. Cawood
National Collegiate Athletic Association
6201 College Boulevard
Overland Park, Kansas 66211-2422
Telephone: 913/339-1906
Fax: 913/339-0027

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SCHEDULE OF GROSS RECEIPTS
Postseason Football Audited Financial Report

Name of Bowl ____________________ Date of Game __________

1. Ticket sales (from Schedule A, line 8) .... $ __________

2. a. Gross membership fees .... $ __________

   b. Less approved deduction .... (__________)

   c. Total .... __________

3. Concessions .... __________

4. Program sales .... __________

5. Advertising

   a. Programs .... __________

   b. Radio .... __________

   c. Television .... __________

   d. Video .... __________

   e. Tickets .... __________

   f. Total .... __________

6. a. Gross radio rights .... __________

   b. Less all rights if participant originated broadcast .... (__________)

   c. Total .... __________

7. a. Gross television rights .... __________

   b. Less unrelated third-party fees .... (__________)

   c. Pay-per-view television rights .... __________

   d. Total .... __________

8. a. Gross title sponsorship rights .... __________

   Less: b. Unrelated third-party fees .... (__________)

   c. Entertainment expenses .... (__________)

   d. Amount(s) allocated to other events .... (__________)

   e. Other .... (__________)

   f. Net title sponsorship rights .... __________

1

9. Merchandising sales .... __________

10. Film/movie/video rights .... __________

11. Licensing fees .... __________

12. a. Gross corporate sponsors/ contributions .... __________

Less: b. Restricted for direct benefit of competing institutions .... (__________)

c. Restricted for pregame and half-time expenses .... (__________)

d. Net corporate sponsors/contributions .... __________

13. Other revenues (please specify)

a. .... __________

b. .... __________

c. .... __________

d. Total other revenue .... __________

14. Total receipts (add totals from lines 1-13) .... __________

15. Awards .... (__________)

16. Certification fee .... (__________)

17. Letter-of-credit fee .... (__________)

18. Other deductible expenses approved by the committee .... (__________)

19. Deductible fees (add totals from lines 15-18) .... (__________)

20. Net gross receipts before interest income (subtract line 19 from 14) .... __________

21. Interest income

a. Enter total from line 20 .... __________

b. Multiplied by U.S. Treasury bill rate .... __________

c. Multiplied by days from game date to distribution date .... __________

d. Divided by 365 .... __________

e. Interest income .... __________

22. Total gross receipts (add lines 20 and 21e) .... __________

Schedule A - Ticket Sales

1. Ticket sales............No. 1a. ________ @ 1b. $ ________ Total 1c. $ ________

2a. ________ 2b. ________ 2c. ________

3a. ________ 3b. ________ 3c. ________

4a. ________ 4b. ________ 4c. ________

5a. ________ 5b. ________ 5c. ________

6. Gross ticket sales (add amounts in column c, lines 1-5)................... $________

7. Less — Taxes .... (________)

8. Net ticket sales .... ________

9. a. Stadium capacity________ b. Gross attendance ________

10. Number of tickets sold by: 11a. ________ 11b. ________

Report of Independent Accountants

TO: The National Collegiate Athletic Association.

We have audited the accompanying schedule of gross receipts of the ______________________________
(name of game)

played between ______________________________ and ______________________________
(institution) (institution)

on ______________________ , ______________________________ .
(date) (city and state)

This schedule is the responsibility of the ______________________________ management.
(sponsoring organization)

Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedule of gross receipts is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of gross receipts. An audit also includes assessing the accounting principles used and significant estimates made by management as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedule of gross receipts audited by us presents fairly, in all material respects, the gross receipts derived from the above described game and the amounts due to the two participating institutions and the sponsoring organization in accordance with NCAA Bylaw 30.9 and Executive Regulation 31.5.

This report is intended solely for the information and use of the ______________________________
(sponsoring agency)
and the National Collegiate Athletic Association.

SIGNED ______________________________ DATE ______________________________

TITLE ______________________________

NAME OF FIRM ______________________________ CITY, STATE ______________________________

RETURN BY APRIL 1 TO:
David E. Cawood
The National Collegiate Athletic Association
6201 College Boulevard
Overland Park, Kansas 66211-2422
913/339-1906

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Definitions for the Components of Gross Receipts

Ticket Sales. Gross receipts shall include the gross income from the sale of tickets less applicable taxes, except those paid as stadium-use taxes for rental, cost of permanent equipment, or in lieu thereof. Third-party fees for handling/selling tickets shall not be deducted from the gross ticket price. Internal handling fees shall not be deducted from ticket revenue. All tickets shall be accounted for at face value and shall become a part of gross receipts.

Membership Fees/Dues. If the payment of membership fees/dues to the sponsoring agency, or an affiliate thereof, is required in order to purchase game tickets and/or gain priority seating rights, or otherwise results in admission to the game, then 50 percent of the gross membership fees/dues (less the price of the bowl game tickets that is included in ticket sales revenue) shall be included in gross receipts. Exceptions may be authorized only by written agreement from the Special Events Committee.

Programs/Concessions/Merchandising Sales. Gross receipts shall include gross profit received by the sponsoring agency, or an affiliate thereof, for the sale of programs, concession items or merchandise; e.g., clothing, watches, glasses or other memorabilia. Gross profit shall be defined as gross sales less direct costs of producing and selling the program, concessions and/or merchandise.

Advertising Income. Gross receipts shall include gross income received by the sponsoring agency for sale of advertising for television or radio programs, in printed game programs and/or media guides, highlight films/videos, or in the stadium. When advertising is solicited by an independent third party under contract with the sponsoring agency, whereby it receives only a share of advertising revenue, gross receipts shall include only the amount received for such items by the sponsoring agency from the third party.

Radio Broadcast Rights. When a sponsoring agency administers the radio broadcast policies outlined by the Special Events Committee that permit the official radio station/network of a competing institution to purchase origination rights to the bowl game, the official radio station/network should pay the sponsoring agency four times the one-minute published rate of the station(s) as listed in the current edition of Standard Rates and Data. All radio income shall be excluded from gross receipts if the official station/network of a participating team is permitted to purchase origination rights for its normal in-season distribution outlet(s).

Television Contracts. When the negotiating and/or obtaining of a television contract is performed by an unrelated third party under contract with the sponsoring agency, the sponsoring agency shall be entitled to deduct 100 percent of the annual amount paid to the unrelated third party from the amount to be included in the computation of total gross receipts; but, in any event, the deduction cannot exceed 15 percent of the annual television receipts unless approved in advance by the Special Events Committee.

Title Sponsorship Rights Contracts. When the negotiating and/or obtaining of a title sponsorship contract is performed by an unrelated third party under contract with the sponsoring agency, the sponsoring agency shall be entitled to deduct 100 percent of the annual amount paid to the unrelated third party from the amount to be included in the computation of total gross receipts; but, in any event, the deduction cannot exceed 15 percent of the annual title sponsorship rights allocated to the game unless approved in advance by the Special Events Committee.

Title Sponsorship Entertainment Expenses. When the provisions of a title sponsorship agreement require the sponsoring agency to provide transportation, lodging and/or entertainment for the title sponsor (excluding the cost of game tickets provided to the title sponsor, which is included in ticket sales revenue), the sponsoring agency shall be entitled to deduct the lesser of (a) the actual expenses incurred, up to $100,000, or (b) 10 percent of the annual gross title sponsorship receipts from the amount to be included in the computation of total gross receipts, but not greater than $100,000.

Allocation of Title Sponsorship Rights. When the provisions of a title sponsorship agreement for a bowl game require the sponsoring agency, or an affiliate thereof, to allocate title sponsorship fees to nongame-related events, the allocation must be reasonable in the circumstances, but in any event, the total allocations to nongame-related events cannot exceed 10 percent of the annual title sponsorship receipts, unless approved in advance by the Special Events Committee. Nongame-related events include any activity or event for which the sponsoring agency, or affiliate thereof, does not use the name of the bowl, or is associated with any NCAA institution or its constituency in its title or promotion, nor requires the involvement of any member or representative of a participating institution or its constituency, nor does the event promote the bowl game.

Film/Movie/Video Rights. Gross receipts shall include the gross income received by the sponsoring agency for the sale of rights to produce a game highlight film/movie/video. When a game highlight film/movie/video is produced by an independent third party for the sponsoring agency as a gift-in-kind or in exchange for advertising, the cost of film/movie/video production as paid for by the third party shall be included in gross receipts.

Licensing Fees. Gross income received by the sponsoring agency, or an affiliate thereof, for licensing and marketing of a bowl game, and/or the names and marks, whether registered or unregistered, of the institutions participating in it, shall be included in gross receipts. A waiver of this provision may be granted to "closed" games.

Corporate Sponsors/Contributors. Gross receipts shall include cash receipts from corporate sponsors/contributors, whether restricted or not restricted. Gross receipts shall include any funds received from the city, county, tourist development agency or similar organization. The sponsoring agency may exclude $50,000 of restricted contributions if used for events that are for the direct benefit of the competing institutions; e.g., players' luncheon. Cash receipts from corporate sponsors/contributors that are not related to the game and for

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which the sponsor does not receive any promotion/exposure from the game, or its related events, may be excluded from gross receipts.

Corporate Sponsors/Contributors, Pregame/Half-Time Shows. If contributions are legally restricted for the staging of a pregame and/or half-time show for the bowl game, the contributions may be omitted from gross receipts until such time that all direct pregame and/or half-time costs have been covered. Legally restricted contributions exceeding the direct pregame and/or half-time costs shall be included in gross receipts. A pregame program shall occur in the stadium not earlier than two hours before kickoff.

Team Awards. When game management provides gifts that value approximately $300 each for the 95 student-athletes, the bowl may send documentation to the committee demonstrating the value of the gifts. If approved by the committee, the bowl may deduct $25,000 from gross receipts.

Other Revenue. Any net income accruing or assigned to the sponsoring agency, or an affiliate thereof, from events and activities related to the bowl game shall be included in gross receipts. Other income that is derived from nongame-related events shall be excluded from gross receipts.

Interest Income. Gross receipts shall include interest on net gross receipts from game day through the date of distribution to the competing institutions. Net gross receipts for the purpose of calculating interest income shall be defined as total gross receipts less (1) ticket revenue retained by a participating institution; (2) the cost of the NCAA certification fee; and (3) the cost of a letter of credit, if required. Interest on television and title sponsorship revenue shall be calculated from date of payment, as required in the fully executed contractual document, but in no case shall interest be computed as received later than January 31, through date of distribution to the competing institutions. Interest shall be calculated at the first 30-day U.S. Treasury bill rate available after the respective bowl game.

Letter of Credit—Recertification. A postseason football contest that has not distributed a minimum average of $1 million to each participating institution during the preceding three-year period shall secure annually an irrevocable letter of credit guaranteeing the minimum revenues that will be distributed to the participating teams. Any bowl that has not been certified for three consecutive years shall include in the letter of credit an additional 25 percent to cover expenses related to game management, operations and administration. The letter of credit shall be made payable to the NCAA and shall cover the period from November 1 until the participating institutions have notified the NCAA that they have received their distribution of gross receipts, or not later than May 1. The letter of credit also shall specify that the NCAA is responsible for the distribution of revenues to the participating institutions in the event of default. The cost of the letter of credit shall be deducted from gross income.

Affiliated Organizations. An affiliated organization is any group that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the sponsoring agency of a certified bowl game. Control would include the possession, direct or indirect, of the power to direct or cause the direction of management and/or policies of an organization. Control may be maintained by management, which would normally include members of the board of directors, the chief executive officer, executive director or other persons who perform similar policy-making functions.

Game-Related Event. A game-related event is any activity for which the sponsoring agency, or an affiliate thereof, meets any one of the following criteria: (1) uses the name of the bowl; (2) is associated with any NCAA institution participating in the bowl game or its constituency or uses the name or marks of such institution in the title or promotion of the event; (3) requires the participation of any member or representative of a participating institution or its constituency; and/or (4) the event promotes the bowl game. Exceptions only may be authorized by written agreement of the Special Events Committee.

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Senator DEWINE. Mr. Kramer and Mr. Benson, I wonder if you could enlighten us as to the status of any negotiations that might be going on between the WAC and the Alliance. Mr. Kramer, you did make some reference to it.

Mr. KRAMER. Yes, sir. The Alliance has had longstanding discussions, discussions long before this hearing was scheduled, with possible participation. We feel it is important to arrive at some resolution here. We had some discussions earlier that dealt primarily with financial distributions. The WAC, in particular, came back and felt that the access issue was equally important, or perhaps more important than the financial.

Our group went back together and discussed it at great length, and we have come forward with a proposal that would provide access at the level of sixth ranking in the future for a team that is there. It would guarantee them a slot in one of the Alliance bowls; furthermore, that there would be a financial distribution to each of these conferences based on their agreement to participate and make their champion available for the Alliance.

Senator DEWINE. That offer is open to every conference?

Mr. KRAMER. That offer would be open to every conference across the board, as it was originally open to the Mid-American, to the Big West, for instance, as well.

Senator DEWINE. Mr. Benson.

Mr. BENSON. Just to respond, beginning last early November, even before BYU or Wyoming were far into their season, we made a proposal to the Alliance recommending that if a WAC team or the other conferences had a team ranked No. 12 or better, we would receive automatic inclusion in the Alliance. That proposal went through the fall and the Alliance did submit a counter-proposal in early January that did provide revenue to the four conferences, but did not, as Roy said, address the access issue. At that time, we did indicate that access was important.

Senator DEWINE. Excuse me, but what do you mean by access?

Mr. BENSON. We realized that the six conferences that make up the Alliance have built the bowl system as it is today, and we only want a chance to participate in it when we have a team that we believe merits consideration, unlike the automatics that the other conferences have. So our proposal of No. 12 was to reward a conference and/or a team that truly has established itself on the field. Their No. 6 ranking, we do not believe is adequate enough.

Senator DEWINE. Why not?

Mr. BENSON. Based on the likelihood of a team reaching No. 6. Granted, BYU would have met that criteria this year and would have been selected, but looking in history, that would not have occurred over the past 10 years but one other time. We believe strongly that if the other conferences are going to receive the automatics that there needs to be some greater opportunity for the other four conferences.

So from a negotiations standpoint and where we stand, WAC presidents met earlier this week, have taken under consideration the Alliance proposal. The WAC presidents meet June 1 through 4, at which time they will review thoroughly and fully the negotiations.

Senator DEWINE. Thank you. Mr. Dempsey, let me ask you and make sure I understand, the NCAA now has a playoff system in Division I–AA, is that correct?

Mr. DEMPSEY. That is correct.

Senator DEWINE. And Division II?

Mr. DEMPSEY. That is correct.

Senator DEWINE. Division III?

Mr. DEMPSEY. That is correct.

Senator DEWINE. And did I understand you to say that you have a playoff system in how many other sports?

Mr. DEMPSEY. Thirty-two sports; we have 81 championships.

Senator DEWINE. And those are determined by a form of a playoff system, is that correct?

Mr. DEMPSEY. Yes, all the other sports do have a national playoff either by division or a national championship crossing over all three divisions.

Senator DEWINE. So Division I–A is the only one that does not?

Mr. DEMPSEY. That is correct.

Senator DEWINE. Now, in your written testimony, and you also gave this orally—and let me just thank all of the witnesses for, I thought, excellent testimony and for keeping it within a reasonable time so that it gives us some time to ask some questions. I thought it was all excellent.

Let me read, if I could, Mr. Dempsey, from your written testimony. "It is only fair to say that there continues to be opposition to any movement toward an NCAA Division I–A championship by a majority of our membership. Concern has been expressed, for example, about potential negative effects: disruption of student-athletes' academic calendars." Let me take these one at a time, if I could.

Mr. DEMPSEY. Sure.

Senator DEWINE. How many games do the teams—let's say the winner of Division II or Division I–AA; how many games would that team play to get to the finals, the two final teams? How long would that season be?

Mr. DEMPSEY. It would take them 4 extra games, so it would be a maximum of 15.

Senator DEWINE. OK, so they could be playing 15?

Mr. DEMPSEY. Yes.

Senator DEWINE. And for Division III, it is one less?

Mr. DEMPSEY. It is the same.

Senator DEWINE. It is the same?

Mr. DEMPSEY. Yes.

Senator DEWINE. So they are all the same?

Mr. DEMPSEY. Right.

Senator DEWINE. The regular season now for all your divisions is what?

Mr. DEMPSEY. Eleven.

Senator DEWINE. Eleven, and then you can add on one if they play in Hawaii this year or next year?

Mr. DEMPSEY. Yes.

Senator DEWINE. Right, and they get one if they play in one of the——

Mr. DEMPSEY. Preseason.

Senator DEWINE [continuing]. "Preseason" games?

Mr. DEMPSEY. And also a conference championship game would be excluded. So it is possible, as BYU did this last year, to play 15 games.

Senator DEWINE. Right, but when I look at a schedule, most division—or any of these teams, I am going to see 11 games?

Mr. DEMPSEY. Probably 12 for those who merit going to a bowl game. We have 18——

Senator DEWINE. A bowl game?

Mr. DEMPSEY. Yes. We have 18 bowl games, which obviously have 36.

Senator DEWINE. Right.

Mr. DEMPSEY. That will rise to 20 next year, so there is the potential of certainly 40 more institutions playing the 12th game next year.

Senator DEWINE. But when you say concern has been expressed for the disruption of student-athletes' academic calendars, the next issue is lengthening the season and increased pressures to win. Explain to me what the difference is between Division I–A and the other three divisions.

Mr. DEMPSEY. Division I, in particular, and I–A probably more specific—its mission statement established in the late 1970's was to indicate that institutions should be as self-sufficient financially as possible, and that is where we begin the marketplace issues and it has driven a lot of our economic decisions related to——

Senator DEWINE. Excuse me, excuse me. I am not asking for the other reasons. You can tell me those, but I want to stay with what is in your written statement.

Mr. DEMPSEY. OK.

Senator DEWINE. Let me just finish; disruption of student-athletes' academic calendars, lengthening the season, and increased pressures to win. It just seems to me, at least on its face, unless there is something I am missing, that whatever the merits of those—and I am not arguing the merits today for a playoff or not. That is not my position as chairman of this subcommittee to do that.

But if you are making the argument that that is a problem, the reason you can't go to a playoff system in regard to Division I–A, but you are doing it for the other ones, aren't these student-athletes just as important whether they play in I, II, or III?

Mr. DEMPSEY. Well, I think that is true. I think the difference and the reason we started the championships in the other divisions—we did not have a bowl system, and the bowl system in I–A, in a sense, has supplemented a playoff system. As I mentioned before, there are 20 of those now this coming year. So the concept by I–A leadership was that we can celebrate the game of football better through the bowl system than we can through a playoff.

Senator DEWINE. OK, and I appreciate that. You have been very clear in your testimony about—and several of the witnesses have; Mr. Kramer certain did—about the importance of the bowls to college football. Certainly, coming from the State of Ohio, I certainly don't question that at all and I understand it.

I just want to make sure I am getting the reasons why these decisions are being made, and again not in any way saying they should or shouldn't be made. But, really, the reason is the connection to the bowls that want to be preserved. I mean, it can't be the disruption of student-athletes' academic calendars, lengthening the season, or increased pressures to win because if that were really the concern, you care as much about the young people who are playing for these other teams as you do for the Division I–A teams. A bowl only adds one more game to a season; it is not three or four.

Mr. DEMPSEY. You lost me on that last statement.

Senator DEWINE. Well, the point is you have made the point you do not want to go to a playoff system because it is going to lengthen the season, hurt academics, et cetera. But the NCAA is allowing this and is engineering this to happen in the other three divisions.

Mr. DEMPSEY. Well, I would like to respond in the sense of when we did our exhaustive study in 1994, one of the groups that we met with was a group of student-athletes who had participated in January 1 games. We had about 12, 13 athletes that were involved. That is one of their concerns, is the erosion and effect it might have upon their academic calendar.

They were also concerned about the fatigue factor, and there may be some aspect of greater intensity involved in I–A football than some of the other levels. That is argumentative. I recognize that as one having come out of Division III.

Senator DEWINE. I have found these athletes are competitive no matter what division they are playing for. They all want to win.

Mr. DEMPSEY. Well, I will assure you the group that we talked with were not interested in a championship unless several of those issues could be addressed.

Senator DEWINE. OK, and I appreciate that. Thank you very much.

Senator McConnell.

Senator MCCONNELL. Coach Cooper, it looked like you wanted to say something on that.

Mr. COOPER. I would just like to say that that should be—that is an embarrassing statement to a coach that is coaching I–AA football and Division II.

Mr. DEMPSEY. I said it was argumentative.

Mr. COOPER. That is an embarrassing statement. Every coach—I won't say every coach, but 75 percent of the coaches that are at the major colleges today started at I–AA and Division II schools. I played Division II football. I am now a Division I head coach. I worked for Lou Holtz. He started at William and Mary. Bo Shembechler, one of the greatest coaches ever, was a high school coach. So to say that there is a difference in intensity, I don't—I had better stop.

Mr. DEMPSEY. I said that was argumentative.

Senator DEWINE. Well, we have just proven that, haven't we?

Mr. COOPER. Yes, it is argumentative.

Senator DEWINE. Mr. Kramer.

Mr. KRAMER. Mr. Chairman, I alluded to the fact that in my past history I was a football coach at Central Michigan University, both when it was Division II and when it finally became Division I–A. When it was Division II, we played for the national championship, played three additional games, played a game on our home field, played one in Texas and one in California. I will tell you the difference between that competition and I–A.

Is it disruptive to the student academically? I will tell you personally, knowing the difficulties we have, yes, it is. Was it worth it to offset it because we had no other bowl opportunities and there was absolutely nothing there? Properly, you might weigh that against that. But I will tell you the difference. When we went to Wichita Falls, Texas, which was a great site, but nevertheless that is where we were, and eventually in California, we took probably 50 or 60 students with us, maybe, if that.

In my part of the country, and Senator Sessions can tell you this, when Auburn goes to a bowl, when Alabama goes to a bowl, when Florida goes to a bowl, we take literally thousands of students at a time when we are right in the middle of final examinations. That is a distinct difference between I–AA and I–A, as I have seen it on both sides.

Senator DEWINE. Senator Bennett.

Senator BENNETT. I apologize, Mr. Chairman. I have to leave immediately for another hearing that is starting at 4 o'clock, and I'd like to make a few comments. Mr. Dempsey, I didn't mean to offend you with my reference to the NCAA teams as a farm team. You say only 1 percent of your players go on to the NFL.

Mr. DEMPSEY. Less than one.

Senator BENNETT. Less than one. I think 100 percent of NFL players come from the NCAA. You may not consider yourself a farm system for them, but they certainly do.

Mr. DEMPSEY. That is not our main mission.

Senator BENNETT. I understand that, but the NFL is in the minds of a lot of young men when they come to play for you.

Mr. Kramer, I would be delighted to have you coach any team I am cheering for. You are as inspirational a speaker as I have ever heard, and I think that is terrific. I know you were a great coach, but I must say this to you. You said trust us on the issue of the at-large berths as you were putting this thing together, and we did and you failed. That is why we don't trust you now. It is as simple as that.

Mr. KRAMER. Could I respond to that, please?

Senator BENNETT. Absolutely.

Senator DEWINE. You certainly can.

Mr. KRAMER. The selection process which is very critical to the participation of the bowls—the bowls that are part of this bid for this. It was an open, free market in which nine bowls submitted bids. We offered it to everybody. Nine bowls actually bid for this process. It was very critical to those bowls to have some selectivity in the process beyond the No. 1 and two games. To do that, that selectivity was incorporated into that.

We, on the other hand, put in a rule which had never been in the bowl selection process in the past that you had to meet certain standards, an 8–3 record, for instance, to be in this pool. In the past, we had teams—I won't refer to which teams, but some that you would know very well that have great names got selected at 7–4 and 6–5, but we changed that. We made the pool selection so that we limited that so the bowls could pick better teams.

But the bowls insisted on that selectivity because you must realize the bowls are still operations of chambers of commerce, of convention and tourist bureaus, of the business communities they are a part of, and they demanded that in order to put an amount of money on the table to make these bowls work, some ability to have a selectivity in that process. The selectivity of the Fiesta Bowl or the Orange Bowl in last year's occasion was the selectivity exercised by the bowls, not by the Alliance.

Senator BENNETT. I understand that, but the Alliance, if I may coin a phrase, was in alliance with the bowls. I agree that the old circumstance was a mess. I agree that you made an excellent effort to try to clean it up. I just don't think you succeeded and I think you need to go back to the drawing board and keep working at it.

There is only one other comment I would make to the NCAA. There is, of course, a parallel with basketball here. I remember the days when the National Invitational Tournament was the national championship in basketball. The NCAA was the consolation prize. I remember that very vividly because when I was growing up, the University of Utah got into the NCAA, lost, and was on its way home when a team that was in the National Invitational Tournament, the NIT, was in a terrible accident and its players were killed. They had a vacant berth and the University of Utah was allowed to go back in mid-journey, back to the East Coast, and take that last remaining berth in the NIT, and went on as the cinderella team that won the NIT and the national championship and brought great joy to all of our young hearts in the Wasatch Mountains.

You changed that, Mr. Dempsey. The NCAA has made the NIT the second-rate championship, and the only teams that go to the NIT now are the teams that are not in the true playoff. Think about that. You have got a circumstance here where a group of schools, a group of conferences, have put together their version of what ought to be the true playoff. And you are sitting on the sidelines and your champion is the second-rate champion to the one that an independent group has put together. You might think about reclaiming your turf.

Senator DEWINE. Senator McConnell.

Mr. DEMPSEY. May I respond to that?

Senator DEWINE. Oh, you certainly can.

Senator BENNETT. Certainly.

Mr. DEMPSEY. That really ties in with my closing statement in the fact that the board of directors of Division I, which is composed of a number of presidents, is reviewing the role of the NCAA in post-season football. That is why I encouraged that you give them that opportunity. They meet in June and I would be happy to forward the results of that discussion and further discussions back to this body, if you so desire.

Senator BENNETT. Thank you. May I, along with the chairman, thank you all for coming. I realize this is not the most fun thing for you to do on an afternoon, and we appreciate your willingness to come. We appreciate your candor and we know you all have good intentions. I don't mean to, with the pointedness of my questions, challenge anybody's motives. Thank you again.

I apologize that I have to leave and I apologize to the next panel. I have another full committee that I am to attend in about 15 seconds.

Senator DEWINE. Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman. I, too, want to thank everyone for coming.

Mr. Dempsey, you have described the history of the bowl system and how it developed, and suggested that it really pre-dates the NCAA. I think I have also heard you say that Division I–A college football is the only sport under the NCAA that does not have a playoff system.

I am wondering what you say to people like Coach Cooper and to Richard Peace, who make up, according to our calculation, 40 percent of the student-athletes who participate in college football Division I–A. What do you say to them?

Mr. DEMPSEY. For not having a playoff?

Senator MCCONNELL. Well, what do you say to them when they say we would like to be able to compete at the highest level if we have earned it? What is your response to that?

Mr. DEMPSEY. Well, if I can take just a moment and go back and explain what we tried to find out in 1994, we had a committee of coaches from the American Football Coaches Association. We had a group of athletes that were involved. We had a group of athletic directors that were involved. We had a number of presidents that were involved in a whole process.

The NCAA has always come out very strongly opposed to a national football playoff. now, there is a reason for that I can explain, if you would like, at least my perception of it. The commissioners and the presidents of intercollegiate athletics have been opposed to a Division I–A football playoff. So you take the players, the coaches, and the leadership opposing it. There has not been much support to indicate we ought to have it.

Now, that is under constant review and it changes, obviously, with time, but I think you need to recognize that each of the divisions now are able to determine their own destiny. As Members of Congress are doing to disagree from time to time on what ought to be done, we will find divisional differences in whether or not we should have certain playoffs or not have playoffs.

Senator MCCONNELL. Well, that leads me to the question I really want to ask you, which is who are the people who make the decision. I am one of those people who is a little confused about the relationship between the Alliance, on the one hand, which Mr. Kramer is representing, and the NCAA, on the other hand, which you are representing.

As the NCAA considers its future with reference to post-season football, who is that? Are those the presidents? Are those the athletic directors? How many of the people who are making that decision represent the 40 percent excluded class that are unable to aspire to greatness today? Who makes that decision?

Mr. DEMPSEY. As the poet said, it is us, in a sense. Our organization is composed of the 940 institutions, and in Division I–A it is 110. Our new structure—there is a board of directors in Division I composed of college presidents, entirely of college presidents. That is a body of 15 members that will determine and ratify legislation, and the only way that could be overturned is if two-thirds of the membership——

Senator MCCONNELL. Could I ask you a question about the 15?

Mr. DEMPSEY. Yes.

Senator MCCONNELL. Of the 15 college presidents, how many of them are presidents of institutions who are in the excluded class?

Mr. DEMPSEY. There would be 10 Division I–A conferences and all 10 of those have a representative—well, I shouldn't say that. Two conferences have one representative and they are either represented in the board of directors or the other member would be represented in the management council, which is a group of athletic administrators. Athletic administrators report to the board of directors.

Senator MCCONNELL. Mr. Benson, do you want to take a shot at that?

Mr. BENSON. I was just going to say that the makeup of the board of directors—as Mr. Dempsey indicated, the ten I–A conferences all have a representative, of which the WAC and Conference USA have a president on that board.

Senator MCCONNELL. So let me ask the question of you. Of this decisionmaking group, what percentage of them represent the excluded class, two?

Mr. BENSON. I would say two, yes.

Senator MCCONNELL. Two out of fifteen?

Mr. BENSON. Out of the 10 that will probably make that decision, even though there may be five other presidents on the board of I–AA, I–AAA. But inasmuch as this would be a I–A issue, the number of presidents who would make that decision would probably be ten.

Senator MCCONNELL. Let me rephrase the question. Is the majority of that group currently in the preferred class?

Mr. BENSON. Yes.

Senator MCCONNELL. Does that group then have the authority to make a final decision as to what may or may not——

Mr. BENSON. Yes.

Mr. DEMPSEY. Yes, they do. They can be overridden by the membership, but that would take a five-eighths vote for that to occur.

Senator MCCONNELL. So the membership of the group that makes the decision about the future of college football consists of a majority who benefit from the current system and that could only be overridden by a vote of the general membership and it would require a super-majority of five-eighths to do that?

Mr. DEMPSEY. That is true.

Senator MCCONNELL. Mr. Dempsey, would that pass the smell test? If you were trying to explain to Coach Cooper and to Richard Peace the fairness of that, would that be an easy thing for you to do?

Mr. DEMPSEY. Well, having just gone through this for 18 months now of restructuring the NCAA and having seen a number of compromises that have been made and having seen the collegiality of college presidents in this process, I have great confidence the system will work, yes.

Senator McCONNELL. Let me pose that question to Coach Cooper. Is that an arrangement, coach, that you are comfortable can produce a fair decision?

Mr. COOPER. No, not at all. You know, it is frustrating sitting here as a coach and listening to all this. You know, the only thing that I think we are asking for is an opportunity to earn the right to play in the bowl; you know, the opportunity. Let's go play the game on the field with shoulder pads and helmets, and let's get our 11 and your 11.

Teams are playing against each other from all types of conferences. We played Penn State. You know, we played Michigan State. We are playing Oklahoma. We are playing everybody that has a chance. I look at it from a football standpoint and say when East Carolina beat No. 19 ranked Miami on national TV, 34–6, it wasn't even close. East Carolina stayed at home at 8–3 and Miami got to go to a bowl. I look at the entire thing and say something is wrong.

I look at Texas at 8–4, at 8–4. They went to an Alliance bowl. They lost four football games. Now, I know it is because of the conference title and I am not taking anything away from Coach Mackovic. He does a great job. He shouldn't complain. It is a great situation for him, but I am looking at the overall situation and I am saying it needs to be fair. Let's earn the thing on the field. Ask the players, ask the coaches.

I don't think that the coaches at some of these schools that are part of the Alliance would say "I agree with what is going on right now." I think they would say it is unfair, but sometimes you don't ask the coaches. One coach is here today, one coach is here today. You don't ask the coaches. The coaches, I think, would say that BYU deserved to be in an Alliance bowl. The coaches voted them No. 5. The coaches voted them before the game, the coaches voted them after the game, but the coaches don't decide who gets to go. Somebody else is doing it so it is unfair, and hopefully a little 3- or 4-year-old could see that.

Senator McCONNELL. Thank you, Mr. Chairman.

Senator DEWINE. Mr. Kramer or Mr. Dempsey, maybe you could respond to the coach's comment. Let's just be real candid and give me your opinion why BYU didn't go to a bowl. What is the reason?

Mr. KRAMER. Well, let me start by saying——

Senator DEWINE. I am not being critical. I just want to know. You spent your life in this——

Mr. KRAMER. Let me start by saying that the issue is selectivity, and whatever plan we put together, whether it is a playoff or whether it is a bowl system or whether it is an expanded bowl system, at some point there will be a line drawn where somebody will be invited and somebody will be left out.

Senator DEWINE. That is a pretty squiggly line, though, isn't it?

Mr. KRAMER. What is that?

Senator DEWINE. That is a pretty squiggly line that goes down and picks up the No. 20 team and excludes the No. 5 team.

Mr. KRAMER. That is correct.

Senator DEWINE. I don't have a dog in this fight, Mr. Kramer, but——

Mr. KRAMER. That team won their conference championship. Because of the historical perspective of the bowls—and you have to understand what that conference gave up because that conference could have a major bowl agreement today if they weren't a part of the Alliance. Their conference was given that slot. That team won that on the field, as Coach Cooper referred to, and therefore were in that process.

But the point I would like to make is whatever process we put together—I said originally in my statement it is not perfect, but whatever process we put together, gentlemen, there will be a selection process, and someone will be left out and we will have another hearing and someone will be there and people will be pleased. But it doesn't matter how that system gets put together. What we are trying to do is improve that system. We are trying to broaden that by offering an opportunity at a certain level that has never been there in the history of college football, and if we do that, I believe we have significantly strengthened the system.

Senator DEWINE. Let me ask Mr. Richardson and Mr. Peace, as student-athletes, what is your opinion about a playoff? Do you have an opinion about that?

Mr. PEACE. If I had to give my opinion on a playoff, if you had asked me maybe before all this had happened with the bowl games, I would probably be in favor of a bowl system just because, you know, it gives us a chance to go somewhere sunny, which in Wyoming is a pretty big deal for us, you know, and have that experience. You know, you get, you know, lots of extra clothes and, you know, things to give your family.

But after I see what can happen, you know, in the bowl system when, you know, out of 112 Division I schools there were only seven that had a higher winning percentage than the University of Wyoming—there were schools that were 6–5 playing in bowl games and we were just eliminated. I don't know why and I don't see why, and right now I feel that the only way that any and every team in the Nation is going to get a fair chance to, I guess, have a national title hope is through a playoff system. That is the only way that I can think of right now, unless they restructure the bowl system that would be fair to all schools, which is, you know, all that we ask.

Senator DEWINE. Mr. Richardson.

Mr. RICHARDSON. My take on that is that, you know, of course, I would like to see a playoff, but there are a lot of different problems that would have to be worked out as far as how would we get the playoff put into the works. There are a lot of different problems with logistics about people traveling and when the games would be playing and just all different types of—you enter into different kinds of arenas. But as a player, I would like to see a playoff, but it is not something that is going to happen any time soon at this level.

Senator DEWINE. But you would like to see one?

Mr. RICHARDSON. Eventually.

Senator DEWINE. Sure.

Mr. RICHARDSON. I mean, I think all players would.

Senator DEWINE. You think what?

Mr. RICHARDSON. I think all—you know, if you play the game of college football, you want to, you know, be in a playoff.

Senator DEWINE. Mr. Dempsey, that brings up a question that I was wondering about. Did you ever do actually any kind of survey, a widespread survey, of your Division I–A players?

Mr. DEMPSEY. We did a focus group.

Senator DEWINE. A focus group. We have had a few of those in politics, too, with mixed results.

Mr. DEMPSEY. Well, I am sure that is true. What we did do is select——

Senator DEWINE. A focus group, just for the record, is a group of, what, 10, 15 people?

Mr. DEMPSEY. There were 12 I–A and 1 from I–AA who had experienced a playoff system. And, you know, if there is one thing that maybe biased it, it was most of those athletes had professional potential and so some of their concerns in terms of the fatigue factor, the potential of being hurt and those things really discouraged them from looking at a playoff without, certainly, some other issues being handled.

Senator DEWINE. Mr. Benson.

Mr. BENSON. Regarding the selection or the selectivity, I think we have to remember, though, that the six Alliance conferences—those champions are provided a spot in one of the four bowls without any criteria, without any minimum ranking, without any performance criteria. What we have proposed—what we are trying to agree amongst ourselves is what is the standard, what is the benchmark that would provide fair access to those two conferences that don't receive the automatic.

We have, as I indicated earlier, proposed a No. 12. We are jockeying back and forth. We countered with a No. 8 based on, if there were going to be four games, eight participants, it seems reasonable that if you are in the top eight that that should be good enough to meet that standard. I think that the access issue, as we have said before, is the crux of this conflict.

Senator DEWINE. Senator Sessions.

Senator SESSIONS. On the playoffs, I have always had mixed emotions about it, but I do think—Coach Cooper, maybe you could share this—if you have got a national championship game on New Year's Day, from the last game, to the night of the game, you are really intense. But there are a lot of bowl games in which the intensity level is not quite as high and you can enjoy the trip more.

Mr. COOPER. For the fans, maybe. For the coaches, the intensity level is high every game. Our job is to put it on the line every week. You know, I have been to a couple of bowl games. We played Florida in the Sugar Bowl when I was at Notre Dame. We almost lost to Hawaii 2 weeks before. I can't say as a football coach, getting that team ready, I truly enjoyed that week. My wife did, but we got the team ready and the pressure is high to win that game.

Senator SESSIONS. I guess what I was thinking—if you had to play some time between November and January 12 four football games, it would be harder on the players and the coaches than to just play one game on New Year's day in Miami.

Mr. COOPER. I know it sounds crazy, and Cedric Dempsey is great for the Division I–A coaches. He is at the Division I–A coaches' meetings; he is up front with Grant Taft. And there was a vote this year. It was asked; we discussed it at the Division I head coaches' meeting about the playoff. But it was brought up, a playoff, and they didn't say anything about the bowl situation.

The bowl situation is great for young men, unbelievable. If you have ever been to one, I don't think that you really understand what the guys go through getting ready all year long, and if you can make it to a bowl game, it is unbelievable. But at the same time, if there is a playoff, combined with not disrupting the tradition of all the bowls—would I like as a coach is to see the Sugar Bowl not be the Sugar Bowl? No, I don't want that, but I think along with the bowl system and a playoff system, I think the coaches—again, I am not talking for all the other people you all talk to. The coaches and players would like to see—No. 1, if there is an eight-game playoff or a four-game, or four teams or eight teams, that just means, along with all the bowls, there is a possibility of more opportunities to take your team to a bowl game.

You know, if you look at the breakdown of all the bowls—and I did it in my statement I turned in—the Big 12 has an Alliance bowl and five bowl opportunities locked in; the SEC, Alliance and four; Big 10, Alliance and four; Pac–10, Alliance and three; ACC, Alliance and three; Big East, Alliance and three. So as I go to recruit against Temple, OK—as I go to recruit against Temple, they can sit there and sell the dream to a young man that you come to Temple and we are going to get our program to 6–5. And, again, I think there were about eight teams with a 6–5 record this year that went to a bowl game.

At 6–5, you come and we are going to be in a bowl game in the Big East, because you know what? We get the Alliance and we get three more of the picks. But is it unfair for me to say I think our program is a better program, to where I am going to look in that kid's eye and say, you come here and we are going to win the conference and we get to go a bowl game?

Well, you tell me what in the State of Kentucky—or you say we are recruiting in the SEC area and some in the Big 10 area. If I go to Detroit to recruit a kid and the head coach of the University of Minnesota can go in there and say, come here and join us in the Big 10—in the Big 10, we can win six games and finish fifth and still go to a bowl game. So you lose something. The thing is unfair.

I am for a playoff, but I am not for totally disrupting the bowls as it is. A bowl game is unbelievable for a young kid. It is unbelievable for a family. It is unbelievable for fans. But when you sit at home at 10–1, 9–2, 8–3—if I am 9–2 next year and I am not in a bowl game, I am going to be highly upset. We are going to call this meeting all over again. I know that. [Laughter.]

Senator SESSIONS. Let me say this. Of course, Penn State and Nebraska would have been a wonderful game. Wally, I know you are very disappointed in not having that opportunity. Arizona State and Florida State would have been a great match-up this year, and we can foresee that that would be possible in the immediate future and I am glad to see that would be possible. So I think it is fair to say we are making progress.

Mr. Dempsey, I want to say to you I remember a book, something about the flack-catchers. They always send out the NCAA guy, but it is, in fact, the college presidents that run your institution, isn't it?

Mr. DEMPSEY. That is right.

Senator SESSIONS. You work for them?

Mr. DEMPSEY. I work for them, and they have the vote as to what will be the direction on a number of our issues, all of our issues.

Senator SESSIONS. With regard to the playoffs, they are pretty strongly opposing it right now, is that right?

Mr. DEMPSEY. They have been, but I would say that they have opened up discussion on it. But I would say it is part of that effort. They don't like to dislike each other, just as members of the Senate don't like that, and so they are working hard to find collegiality and find a compromise to this situation and I think that can happen.

Senator SESSIONS. I agree with you, Mr. Kramer, that nothing is perfect. We will never be fully satisfied. However, I believe we can do better. I think it is difficult. I think we can do better than the match-ups, this year, and I hope that as you go forward you can work toward that end. I hope that we don't have the U.S. Government setting bowl picks.

Thank you, Mr. Chairman.

Senator DEWINE. Senator Thomas.

Senator THOMAS. Thank you. Senator, you and Mr. Kramer may be happier than some of us who are on the outside. It is a little easier to be comfortable if you are on the inside of the Alliance.

Senator SESSIONS. Well said.

Senator THOMAS. Mr. Kramer, I get the sense—you haven't talked much about it, but all these decisions are made by you and others. The bowls are a private institution, aren't they? They are generally for promotion of business. They are generally for profit. Don't they have quite a bit of say in this?

Mr. KRAMER. With regard to the selection?

Senator THOMAS. Sure.

Mr. KRAMER. As I indicated, when we put the proposals out for bid, it was an open bidding process, completely competitive, with nine various bowls bidding right across the board. Each of them asked for some degree of selectivity in that process.

Senator THOMAS. Isn't it true that part of the criteria is that they must be able to make a favorable economic impact on the community?

Mr. KRAMER. That is not a criteria. It is whatever the bowl decides there, but it is certainly not a criteria of the Alliance.

Senator THOMAS. So they wouldn't turn down a team at all that didn't have an economic impact?

Mr. KRAMER. That is their decision, but it is certainly not a criteria of the Alliance.

Senator THOMAS. I am going to go quickly because I know you have another panel.

Mr. Benson, the NCAA has talked a lot about the playoffs, but have they ever spoken out on the issue of the Bowl Alliance?

Mr. BENSON. The NCAA?

Senator THOMAS. Yes.

Mr. BENSON. Well, the board of directors have been asked by the WAC presidents to step in and review post-season football, which would include the current Bowl Alliance inasmuch as it is part of post-season football. That study is ongoing and will be reviewed in June.

Senator THOMAS. But it seems to me there is a difference between the consideration of a playoff and an evaluation of whether the Bowl Alliance operation works fairly or not.

Mr. BENSON. I think that also is the role that the NCAA plays in post-season football, whether or not they are, as they are today, only a certifying body and an oversight body, or do they become a real regulatory and administrative body.

Senator THOMAS. I should ask you, Mr. Dempsey. Has there been talk about the fairness and the validity of the system of the Alliance?

Mr. DEMPSEY. Yes, there has, and this started actually in the fall of 1996 at the president's commission meeting. It was brought up at that time and the president's commission asked that staff come back with a report to them on the history and the background of the bowl system and the selection process. At the March meeting of the president's commission, they reviewed that—I am sorry. The January meeting of the president's commission asked the new-formed board of directors, which actually doesn't become official until August 1, by the way, that they would study post-season involvement of the NCAA. It was left, as Commissioner Benson indicated, in that broadest sense to look at it as to what the role should be and can it be improved and should we have more regulatory influence upon the bowl system.

Senator THOMAS. As a result, perhaps, of this debate and this discussion, do you think the NCAA would take a little closer look at the Alliance itself?

Mr. DEMPSEY. It will be on the agenda in June and I suspect maybe continually until it is resolved.

Senator THOMAS. I see.

Mr. DEMPSEY. I think the presidents are committed to try to find a solution to this, recognizing that all parties can never be satisfied with something possibly as emotional as what we are talking about. But I do believe that the presidents are committed to try to find the best solution possible for intercollegiate athletics.

Senator THOMAS. There are more of your members outside the Alliance than in it, I presume.

Mr. DEMPSEY. Not in Division I–A, there would not be, no. With the six conferences, there would be more included in the Alliance than excluded.

Senator THOMAS. That is not good news, is it?

Mr. DEMPSEY. Well, I would say this. They wouldn't even have studied it if they were not open.

Senator THOMAS. Well, if they are as content with it as Mr. Kramer is, there won't be much change.

Mr. DEMPSEY. Well, personally, again, I will go back. As I have worked with the presidents on our whole restructuring, they are much more global-thinking than us who are athletic management people. I think we have had to worry about the bottom line often and are very narrow in our perspective, and I have found presidents as they have looked at this type of issue really look at it as what is best for intercollegiate athletics and higher education.

Senator THOMAS. Good. Well, I am sure that is true, and thank you so much to all of you for coming.

Senator DEWINE. Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman. Just quickly, I would like to thank Mr. Peace for being here today. I have tremendously enjoyed watching him on the field and he has a tremendous amount of talent and ability there. It is just as interesting, though, to watch you appear before members of the U.S. Senate and make a presentation and to answer the questions with the candor that you did and the ability that you did there. You have a tremendous potential in life and I will be anxious to watch and see where it takes you.

Mr. PEACE. Thank you.

Senator ENZI. One of my observations this afternoon—I will give an observation rather than a question—is that there is a problem out there and it does need to be solved. Senator Sessions made some kind of a comment about not wanting the U.S. Senate to pick the teams. The Western Athletic Conference would have a far better chance under that because we have better numbers, but we will throw ourselves on the mercy of the NCAA to do the right thing and to improve their system. In the meantime, of course, we will be watching to see what happens.

Thank you.

Senator DEWINE. Senator, some of us from more populated States have occasionally, when votes have gone against us, wondered what the Framers of the Constitution were really thinking about with two Senators for each State.

I would like to thank this panel very much. It has been very, very helpful. I am looking forward a little bit to the next panel that will be testifying in regard to some antitrust legal issues, but also the testimony is going to concern some of the economics involved in this whole Alliance.

It just strikes me, Mr. Kramer, based on what I can see from the testimony and what you all have said, you may be the person who was the most involved in putting this Alliance together of anybody we are going to hear from. I wonder if you could take a moment to help us out through this and maybe help prepare for the next panel by describing—you did a little bit of the history, but I would like for you to talk maybe a little bit about the economics involved in this.

One of the witnesses that did not come—we did not subpoena them; we offered them the opportunity to come forward—was ABC. Obviously, they have an interest in seeing a No. 1 and No. 2 game. That obviously would sell better than any other game. That has to be a premium game for them as far as their sponsors are concerned. I am sure that had to be part of the whole package.

My understanding is that you have the Alliance conferences that basically went together to put a product together to make available to the bowls. The bowls, in turn, submitted bids, and then you got ABC coming in here at some point supplying a significant amount of the money. Now, I didn't explain it very well because I wasn't there and I would like for you to explain how all that came together.

Mr. KRAMER. To understand that, Senator, you have to go back and understand, first of all, the present contractual arrangement, and you are exactly right. In that agreement, which did not include the Rose Bowl, the four conferences at that time—the ACC, the Big East, the Big 12, and the Southeastern Conference—began to look at this whole selection process and the concept, with the idea of going to the bowls to see which bowls would be most interested in hosting these conference champions.

As I indicated, nine bowls bid on those arrangements. Each of them came in with different television entities. In fact, the present agreement has two bowls with CBS and one bowl with ABC. The new arrangement that we are working toward was put together primarily as a result of some discussions that ABC obviously came forward with because ABC had the controlling factor in trying to open the bowl system; that is, they controlled the Rose Bowl contract, I believe, through 2005.

Senator DEWINE. So, that gave them the controlling factor?

Mr. KRAMER. That gave them a factor there this first time around. From my own standpoint, I might have moved in a different direction because my regular season television partner is CBS. But nevertheless ABC controlled the Rose Bowl and therefore had a position to put this agreement together that no other network could this time around. I am not saying that would happen the next time. In all likelihood, it would be either multiple contractual agreements or multiple networks involved.

But this time, because of that contractual agreement, ABC had that precedent-setting position and therefore bid in a way that was most attractive to them, which was to put all four bowls together into this package to make it work, and that is how it got to an ABC arrangement this time around.

Senator DEWINE. But am I correct in describing in broad terms what we are talking about in the sense that we are talking about conferences coming together to put a product together to offer teams to bowls? The bowls kind of went through a bidding process? I mean, just kind of run through that for me.

Mr. KRAMER. That is correct. They went through a bidding process. In fact, we are in that process for the next arrangement. We will go back out to bid. The three bowls that were participants in the first one have a right of first negotiation, but they will go through a full bidding process to determine if they remain in that. The one that is not in that is the Rose Bowl because of their arrangement with ABC, and their longstanding contractual agreement is a separate entity in this thing.

Senator DEWINE. The bidding you are going through now is for what year or years?

Mr. KRAMER. It would start following the 1998 season, beginning with the bowl games that would normally be played on January 1, 1999.

Senator DEWINE. Let me get back to the TV contract, though. The TV contract fits into this whole mix. I mean, where does that money get paid to?

Mr. KRAMER. That money under the current contract is paid to the bowls and then the bowls pay directly to the participants in that bowl.

Senator DEWINE. So the bowls have to know going in what they are going to get so they know how much they can bid, right?

Mr. KRAMER. That is correct. Now, the new Alliance is different from that in that ABC has come to the conferences and bid a certain amount of money for their conference champions. It came to that group of conferences and bid for the right to put on television the conference champions of those conferences in a group of bowls. The bowls are to be selected by the conferences under an open bidding process as we will move through in the near future.

Senator DEWINE. Let me thank all of our witnesses.

We have been going for some time now. I would ask our third panel to begin to come up, but we will take a 5-minute, a 6-minute break, and we will come right back.

[Recess.]

Senator DEWINE. I want to thank our panelists for bearing with us, the third panel. We appreciate your coming. Let me take a moment to introduce the first panelist.

Gary Roberts is a professor of law and program director for Sports Law at Tulane Law School. He is currently the president of the Sports Lawyers Association. Professor Roberts is Tulane University's faculty athletics representative to the NCAA and Conference USA, as well as an ex officio member of the Sugar Bowl.

Mr. Roberts, we will start with your testimony. You may proceed. Thank you very much.

PANEL CONSISTING OF GARY R. ROBERTS, PROFESSOR OF LAW AND SPORTS LAW PROGRAM DIRECTOR, TULANE LAW SCHOOL, NEW ORLEANS, LA; DAVID L. BAKER, SPECIAL ASSISTANT TO THE PRESIDENT, UNIVERSITY OF WYOMING, LARAMIE, WY; JAMES E. DELANY, COMMISSIONER, BIG 10 CONFERENCE, PARK RIDGE, IL; CHAD LEWIS, FOOTBALL PLAYER, BRIGHAM YOUNG UNIVERSITY, PROVO, UT; TIM LAYDEN, SENIOR WRITER, SPORTS ILLUSTRATED MAGAZINE, NEW YORK, NY; AND RICHARD CIRCUIT, BOARD MEMBER, PLYMOUTH HOLIDAY BOWL, SAN DIEGO, CA

STATEMENT OF GARY R. ROBERTS

Mr. ROBERTS. Thank you, Mr. Chairman. I am delighted that you are interested in our panel's testimony because apparently you are alone. But I will limit my oral comments——

Senator DEWINE. This is, as you know, a wild day in the U.S. Senate, if you can believe that, with the budget and a few other things going on.

Mr. ROBERTS. I know that. I thought maybe it had something to do with the number of television cameras. I am just kidding, of course.

I will limit my oral comments here to a few brief observations, and for more elaboration I refer you to my written testimony.

On the antitrust issue, I believe that the Bowl Alliance presents a complex rule of reason question because it creates both significant anti-competitive and pro-competitive effects that would have to be balanced, and because there are less restrictive alternatives. There is just no time in 3 minutes to even begin to scratch the surface on all of that. Again, I say it is set forth in detail in my written statement.

If challenged in court, I suspect that this case would likely survive summary judgment and end up being decided by a jury. While jury verdicts are never predictable, I believe the odds are very good that the Alliance would be found to be illegal, for a variety of reasons again which are set forth in some detail in the testimony. I know I would certainly find the Alliance to be an illegal restraint of trade and an illegal conspiracy to monopolize under section 2.

I think perhaps the most significant of these reasons would be the presence of less restrictive alternative, and rather than prattle on with my prepared remarks here, I would like to just set forth what I think that less restrictive alternative is and maybe just throw it on the table and let everybody think about it.

The alternatives are not having the Alliance or a playoff system. You could have a national championship game, a single game between the No. 1 and No. 2 ranked teams, just like the Alliance has, and let that be run by the NCAA. The rest of the system could stay in place. The 18 bowls could continue to function exactly the way they always have. They could invite any teams they want. They just couldn't invite the No. 1 or No. 2 teams. Those two teams would be playing under the auspices of an NCAA championship.

The bowls would remain unscathed by the system. You would have a national championship. All of the pro-competitive benefits that the Alliance generates, which is a national championship game, would remain. The bowls would remain intact. The only problem with this system is how do you divide this enormous pot of revenues that you are going to generate with that national championship game.

I would propose the way to do that is to pay the two participating teams a reasonable sum, just as if they were participating in perhaps the most lucrative bowl games, maybe $3 million a piece, and take the rest of the enormous pot that is going to be generated by that single game and divide it among the 113 schools in Division I–A. That way, you don't unbalance the playing field. You give every school in the division revenues that would enable them to hire coaches and facilities and recruit.

It seems to me that you destabilize the industry the least. The bowls stay intact, every school gets an opportunity to participate, every school gets a share of the revenues, and we have got a national champion. It seems to me you have solved every problem. That seems to me to be a less restrictive alternative and if it were presented to a jury, the jury would find it compelling and I don't see how they would find the Alliance preferable to it.

Thank you.

Senator DeWine. Thank you.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF GARY R. ROBERTS

THE LEGAL AND PUBLIC POLICY EFFECTS OF THE COLLEGE FOOTBALL BOWL SUPER ALLIANCE

I want to thank the Subcommittee for allowing me to share my views on a matter of deep and long-standing concern to me—the legitimacy of the college football bowl Alliance, next year to become the Super Alliance.

By way of introduction, I have been involved in litigating, teaching, speaking, and writing about sports legal issues, especially antitrust issues, for two decades. Since 1983 I have been a professor of law teaching sports law, antitrust, business enterprises, and now labor law at Tulane Law School, where I founded and currently direct the nation's only sports law certificate program. I am also currently the president of the Sports Lawyers Association, a 1,100 member organization of lawyers who work for or represent sports industry clients, on whose board of directors I have served since 1986. I am also the editor-in-chief of the SLA's bimonthly newsletter, The Sports Lawyer. I often speak at sports law conferences, have written several major law review articles and two book chapters on sports antitrust matters, and along with Professor Paul Weiler of Harvard Law School I have coauthored the leading sports law textbook and supplement used in American law schools, Sports and the Law, published by West Publishing Company. I also regularly work with and am cited by the print and broadcast media on sports legal issues and have authored several columns in publications like The Sporting News and USA Today. This is the seventh time I have appeared before a congressional committee in the last five years (and the third time before this Subcommittee) on some aspect of sports, all but one of which involved the application of federal antitrust law to sports.

I come before the committee today to discuss the manner in which a group of college conferences have agreed to eliminate competition among themselves in the sale of their post-season Division I-A football entertainment. I approach this matter from three different perspectives. First, I am an academic with an expertise in sports-antitrust, which causes me to look at the issue from the perspective of the public, the consumer, and consumer welfare, which is today the primary, if not exclusive, goal of antitrust law. Second, I am Tulane University's faculty athletics representative to the NCAA and Conference USA, which gives me the perspective of the Division I-A schools excluded from the Alliance/Super Alliance. Third, I am an ex officio member of the Sugar Bowl, which gives me the perspective of the organizations that are required to make huge monopoly payments in order to participate in the Alliance/SuperAlliance rotation.

It must be emphasized, however, that while my positions as President of the Sports Lawyers Association, Faculty Athletics Representative from Tulane University to the NCAA and Conference USA, and member of the Sugar Bowl give me a familiarity with and a variety of perspectives on this matter, I speak here only as an individual. I am not authorized to speak for or to represent Tulane University, Conference USA, the Sugar Bowl, or the Sports Lawyers Association, and the views I express here are mine alone.

I. THE SUPER ALLIANCE AND THE ANTITRUST RULE OF REASON

The Subcommittee is already thoroughly familiar with the terms of the Bowl Alliance, which began in the 1995 college football season and runs through the 1997 season, and the new Bowl Super Alliance, which will become effective in the 1998 season. It would be redundant to recite their details here. However, certain features of the arrangements are crucial to understanding the antitrust implications of the Bowl Alliance and the new Super Alliance. (From hereonout, unless otherwise noted, all references to "the Alliance" will be to the Super Alliance that will begin in the 1998 season.)

The Alliance is an arrangement among the teams comprising the six participating conferences (the Big East Football, the Atlantic Coast, the Big Twelve, the Pacific Ten, the Big Ten, and the Southeastern) and the University of Notre Dame to deal exclusively in providing their top teams for post-season games with four selected bowl games, one of which will host the so-called national championship game every year on a rotating basis. Because the strong likelihood is that the nation's top two ranked teams at the end of each regular season will be a member of the Alliance, this group effectively controls the post season bowls, all of which strongly desire to host the premier post-season event at least once every few years. Thus, the Super Alliance asks every bowl that wants to host the championship game to "bid" for the privilege of being one of the four selected bowls. The highest bidders then become part of the scheme, hosting the championship game on a rotating basis. The bowls that are not among the highest bidders are excluded from the championship game rotation and thus take on the status of a lesser or minor bowl.

Whether this set of arrangements violates Sherman Act section 1 as an agreement in restraint of trade, or section 9 as a conspiracy to monopolize, is a reasonably close question. There are clearly both procompetitive and anticompetitive effects of the Alliance, as these concepts have evolved in the jurisprudence since the late 1970s. There are also arguably less restrictive alternatives that could be factored into the analysis. My assessment is that it is unlikely that a legal challenge to the Alliance would be resolved either way on motion as a matter of law. Rather, it would be decided by a jury in a protracted rule of reason trial after extended discovery. As any experienced antitrust practitioner knows, verdicts in such cases are unpredictable. However, my own judgment is that because the plaintiff(s) would probably choose the forum, because the equities are strongly against the Alliance, because the relevant standards of proof probably favor the plaintiff(s), and because a good plaintiffs' lawyer could easily portray the Alliance power-brokers as arrogant and greedy, the odds in favor of a jury finding the Alliance to violate the rule of reason are quite good.

A. Procompetitive Effects

On the procompetitive side of the rule of reason balance, the Alliance does create a product that is very popular with consumers of intercollegiate football yet was not consistently available prior to the original Bowl Alliance—namely, a national championship game.[1] Thus, by making a new attractive product available, the Alliance creates an efficiency that is definitely a procompetitive effect, similar to the new product that BMI/ASCAP created in the blanket license for copyrighted songs in *Broadcat Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979). However. the lesson of Broadcast Music is only that when such efficiencies are generated, it is inappropriate to apply a rule of per se illegality. The agreement must still be considered under the rule of reason by weighing its procompetitive efficiencies against its anticompetitive effects.

B. Anticompetitive Effects

Anticompetitive effects are those injuries to consumers that flow from an increase in market power that the targeted agreement creates for its participants by reducing or eliminating competition among them. Those injuries are manifested in the form of higher than competitive prices and lower than competitive output levels or product quality. There are two distinct ways in which the Alliance creates such anticompetitive effects—(1) a decrease in output and product quality in the market in which college football is sold to consumers during the regular and post season: and (2) an increase in prices for the four Alliance bowls.

1. Decrease in output & product quality of college football

Consumers of college athletics are to a great extent motivated by emotional loyalty to a particular school. Certainly, many consumers will be attracted to a great game between two powerful football teams. However, many are interested in college football primarily because they are personally affiliated with one of the schools or because a team is affiliated with a local or regional college. Thus, many fans of the University of Cincinnati football team are not interested in Florida State's team even if it is the best team in the country.

This makes college football very different from typical service or manufacturing industries in that all producers have a consumer base that another producer cannot take from them, even if the other producer has the best team in the country and the first producer the worst. Thus, any restructuring of the Division I–A football industry that either relegates a large number of schools to lower and permanent second-tier (i.e., lower quality) status, or causes some schools to drop football altogether, will result in less consumption of college football since the loyal fans of the affected schools will either have a poorer or no team to follow. This would be a clear decline in product quality and output.[2]

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[1] It should be pointed out that the reason there was rarely a national championship game prior to the advent of the Bowl Alliance was not that the free market did not work, but rather because so many conferences had prearranged contracts to send their champion to a specific bowl—the SEC to the Sugar Bowl; the Big Ten and Pac Ten to the Rose Bowl, the Southwest Conference to the Cotton Bowl, and the Big Eight to the Orange Bowl. This made it very unlikely that the top two teams at the end of the year would end up in the same bowl. It is quite likely that in a free market in which each bowl, aligned with a corporate sponsor and a television network, would bid for the teams that would play in its game, one bowl could project enough revenues contingent on getting a championship game to lure the top two teams. Thus, a free market could produce the only procompetitive benefit of the Alliance probably just as well. However, because the huge revenues from such a game would flow only to the two participating teams (who might share them with their conference partners), this would create a destabilizing revenue disparity among college programs to an even greater extent than the Alliance creates. However, if the revenue disparity problem could be alleviated through a broader sharing of postseason football revenues, a national championship game would be far more desirable if produced through the workings of a free market, not an Alliance controlled market.

This is precisely the effect the Alliance will have on Division I–A—it will drive the roughly 50 Division I–A schools not included in the Alliance permanently out of the highest level of college football and will create an insurmountable artificial barrier to entry for any college that wants to participate in football at the highest level. This barrier to entry will make it virtually impossible for an excluded school ever to become a consistent winning program capable of providing high quality sports entertainment for its fans.

The Alliance argues that its schools are already much stronger football programs so that all it does is recognize an existing gap, but this arrogant claim is both too overgeneralized and legally irrelevant. It is true that currently most of the schools in the six Alliance conferences (although certainly not all) have in recent years put "stronger" teams on the field than most non-Alliance schools (although again certainly not all) because of several circumstances not worth discussing here. But this situation is not static and weaker programs can and sometimes do develop strong programs with proper management if artificial barriers are not erected against them. Even more significantly, however, the consumers (fans) of the non-Alliance schools will suffer from even lower product quality than exists now, or possibly having no team at all, because of the exclusive membership criteria of the Alliance—which is a clear anticompetitive effect that must be considered in a rule of reason analysis whether or not the Alliance members regard the excluded 50 as being inferior and unworthy.

The reason the Alliance will in a short time drive the excluded 50 Division I–A schools into permanent second-tier status or out of the "business" altogether, and will create insurmountable barriers to any new entry, is that it enormously enlarges the financial and prestige gap between the "haves" and the "have nots" of college football. This virtually guarantees that schools in Conference USA, the Western Athletic, Big West, and Mid-American Conferences, and the independents (except for Notre Dame) will never be able to move into the upper tier of successful programs. The Alliance thus transforms the roughly 113 member Division I–A into a self-appointed de facto 63 member elite league, with the 50 or so castoffs left to flounder at a distinctly lower tier or to drop football altogether. This means that at a minimum 275 current Division I–A games every year will either be eliminated or will be distinctly less attractive to consumers, particularly the fans of these 50 schools.

The widening of the gap between the Alliance schools and the 50 excluded schools will occur because of: (1) the lack of prestige suffered by the excluded schools because they are not allowed to play for a guaranteed spot in a major bowl every year, which will greatly adversely affect their ability to recruit elite athletes, to obtain lucrative television appearances during the regular season, and to attract large contributions from alumni and other supporters; and (2) the absence of a share of the guaranteed huge payout that at least one member of the conference would earn, which will create a revenue gap making it impossible for excluded schools to match the facilities, personnel, and services provided by the schools in the Alliance, all of whom receive these huge annual guaranteed revenues. Exacerbating the problem, the revenue gap will be even larger than simply the post-season payout differential because the prestige of being among the top tier of conferences will enable Alliance conferences and schools to earn relatively substantially greater gate receipts, television fees, and corporate sponsorships during the regular season as well.

The Alliance has publicly claimed that it does not injure non-Alliance schools because there are two "at large" spots in the four Alliance bowls that can go to any school that the selecting bowls want, including a non-Alliance team. However, the fact that one of the at large slots in the four Alliance howls can in theory go to a non-Alliance school in a given year does not mitigate the exclusionary effects. In the first place, it will be extremely rare for an excluded school to get one of those slots, even when it appears objectively to be among the best teams in the country—witness the exclusion of Brigham Young University and the University of Wyoming from any of the "major" bowls this past year. But even more significantly, the schools in the excluded conferences are not guaranteed an Alliance bowl spot or a share of the monopoly profits derived from the huge bowl payouts. Every school in the six included conferences knows that it will get a share of those payouts every year no matter how weak it (or even its entire conference) is, and every school in those conferences has the prestige of playing for a guaranteed spot in one of the major bowls. The schools in the excluded conferences are never guaranteed and will rarely receive these large revenues, and they will never have the important prestige that comes from being in one of the self-anointed "power conferences." Lacking this prestige and financial ability to provide top quality facilities, personnel, and services, the non-Alliance schools will be unable to recruit the better athletes and thus be forever barred from competing at anywhere near the same level as the Alliance schools.

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[2] Since every Division I–A football team generally plays 11 or 12 games per year, for every school that drops football, there is a decreased output of approximately six games available for consumers every year.

In short, membership in the Alliance is an essential facility, and a denial of access to that facility will in a short time make it virtually impossible for a nonmember school to survive successfully in Division I–A. This can be analogized to a manufacturing industry where the firms with the largest market shares got together and formed an R&D joint venture that would guarantee them decisive technological advantages, and then denied membership in the joint venture to smaller market share firms on the ground that they were not economically powerful enough to be worthy of inclusion. In fact, in the incollegiate football business, the effect of exclusion from this essential facility is even more detrimental to consumer welfare than in the analogous manufacturing industry since in the latter, if the smaller firms were driven out of business, their customers could simply switch to buying the larger firms' output which, if the industry remains competitive, might be a perfect substitute at no higher a price. In college football, many fans of Brigham Young University, Tulane, Ohio University, the University of Cincinnati, and the other 46 excluded schools do not find football produced by Alliance member schools to be perfect substitutes. Therefore, excluding these schools from the essential facility, and thus the industry, injures these consumers in a significant way that might not occur in a more typical industry.

A second output/quality reducing effect is that by identifying four Alliance bowls with huge financial payouts many times in excess of those of any other bowl, the Alliance relegates the non-Alliance bowls to permanent second-tier status of little interest to consumers. And since this status undoubtedly will result in greatly reduced revenues from ticket sales, television rights fees (assuming a TV network is willing to show the game at all) and corporate sponsorships (assuming a corporate sponsor can be found), many of these second-tier bowls probably will be forced to go out of business.

The fact that many of these bowls were already of lesser status is again of no legal benefit for the Alliance. The free market assumes that new competitors can seek to enhance their position in the marketplace, and that consumers are benefited from the competition that occurs when larger firms are faced with such actual or even potential competition. The Alliance eliminates that competition and dictates which bowls will be first-tier bowls and which will be second-tier or possibly defunct. Consumers attached to the excluded bowls will have the quality of their preferred product diminished or eliminated. This lower output and quality is an anticompetitive effect that must also be factored into the rule of reason balance.

2. *Monopoly pricing*

In addition to the reduced output and product quality effects from squeezing 50 Division I–A schools and a dozen bowls out of the market, the Alliance also creates the anticompetitive effect of arrogating to the Alliance members the market power to charge above-competitive prices. This monopoly pricing phenomenon affects the prices charged by the selected Alliance bowls for tickets and for corporate sponsorships and the price charged for the television rights to the Alliance bowl games.

The tremendous market power that the Alliance possesses by its members agreeing not to compete in selling their post-season participation, thus effectively allowing it to control the championship game every year, enables it to extract huge financial bids (i.e., monopoly prices) from the bowls. However, because only two teams play in the championship game every year, yet six conferences and one independent school are members of the Alliance, some mechanism had to be devised to be sure that the monopoly profits derived from this scheme did not go solely to the two schools participating in the championship game and their conferences. Thus, the inclusion of four bowls in the rotation (three bowls in the original Alliance). Each year, the three included bowls that do not host the championship game are required to select their participating teams from a menu of eligible teams in a way that guarantees that at least one team from each of the six conferences will be in one of the Alliance bowls, and which assures that Notre Dame will also have a slot if it has a typically good season. Then, these three nonchampionship Alliance bowls are required to give to the teams playing in them essentially the same huge payout that is paid to the teams in the championship game bowl—last year roughly $8.5 million per team.

The upshot of this ingenious arrangement is that the four selected bowls are required to spread over a four year period the huge monopoly amount they are willing to pay to host the championship game once every four years. The eight teams that will play in these four "major" bowls include at least one from each of the six Alliance conferences, leaving the remaining two "at large" slots to be filled by Notre Dame (if it has a decent season) and/or a second team from one of the six conferences and/or a non-Alliance team. The payouts received by the teams who are members of the six participating conferences are then given back to their respective conferences and distributed among the other members of each conference so that every year each school in these six conferences is guaranteed a share of at least one huge monopoly bowl payout.

It is clear that the prices charged by the Alliance to be an Alliance bowl (after a bidding process) is much higher than the prices bowls had to pay before the original Alliance was created to get teams to participate. Indeed, that was the very purpose of the Alliance, and its creators have bragged about its success in accomplishing that objective. Payouts by the three Alliance bowls (the Fiesta, the Sugar, and the Orange) after the 1994 season were less than half the $8.5 million payout they were forced to make after the 1996 season. These bowls, however, are merely the conduit, with the ultimate "victims" of the monopoly pricing being the fans who had to pay dramatically higher prices for game tickets (Sugar Bowl ticket prices doubled from $50 to $100 in 1995, the first year of the Alliance), corporate sponsors like Nokia (Sugar Bowl), and the networks that had to pay dramatically greater rights fees (which are then passed on to advertisers and eventually to consumers). Thus, the Alliance has caused an anticompetitive effect that is among those that the Sherman Act aims to prevent—the transfer of wealth (specifically, consumer surplus) from consumers to the producers who enable themselves to coerce this wealth transfer by agreeing not to compete in some aspect of their business.[3]

That there is a substantial wealth transfer is not even disguised. The openly stated goal of the Alliance by its creators, the commissioners of the participating conferences, when first conceived was to increase greatly the revenues of the athletic programs at the schools in the participating conferences, revenue that they claimed was sorely needed to cover escalating athletic costs. Although the commissioners didn't characterize it this way, the Alliance was designed to create market power and to exploit that power to extract greatly increased monopoly profits from consumers of post-season college football.

There are a couple of defensive arguments that the Alliance has publicly made on this point. First is that the increased revenues are not the result of market power, but rather the result of creating a much better and more valuable product that more consumers want to watch. Second is that the increased revenue from this scheme is justified because it is used to further the interests of nonprofit institutions of higher education and their athletic programs. Neither argument is legitimate in an antitrust analysis.

First, there is no doubt that by creating an attractive national championship game, the Alliance has created economic value that did not exit before. This is the procompetitive side of the ledger I acknowledged earlier. But because there can be only one championship game, the entity that controls it almost by definition has monopoly market power to sell it—i.e., the power to charge consumers the full value of the monopoly surplus. Market power is the ability to maximize profits by charging a price that is well above marginal cost. The Alliance's cost to produce its four annual bowl games is no greater than the cost of producing those games was before the Alliance. In a sports entertainment marketplace characterized by perfect competition, the Alliance would not be able to charge buyers of its product(s) more than its marginal cost to produce it. However, because the national championship game is unique, the Alliance created for itself the market power to exploit fully the value it created. In short, the Alliance has done consumer welfare a favor by producing a valuable product, but it takes back much of the favor by extracting all of the economic value of that product for its own members through monopoly pricing—and the monopoly pricing is not only for the championship game bowl, but also for the three other Alliance bowls that have much less economic value.

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[3] If one takes a pure "Chicago School" view, the only goal of antitrust law is to prevent restrictions on the quantity and quality of output. Under this view, monopoly pricing is not by itself an anticompetitive effect because antitrust is unconcerned with wealth transfers and only concerned with output maximization. I do not believe that the law has yet come around to this extreme position despite there being some theoretical justification for it. Noneconomic populist goals have been discarded beginning in the mid-1970s, but most courts have not yet come to accept the idea that charging monopoly prices is not a matter of antitrust concern if the plaintiff cannot prove decreased output. Wealth transfers (i.e., the transfer of consumer surplus from consumers to producers) is still generally accepted as being an anticompetitive effect for section 1 purposes.

As for the second Alliance argument—that it is justifiable to use monopoly profits to fund college athletic programs at nonprofit institutions—it simply is not accurate. A substantial wealth transfer from consumers to producers is no less an anticompetitive effect in a rule of reason analysis if the producers extracting the monopoly profits are nonprofit institutions. The Sherman Act makes no such distinction among defendants. The creation of monopoly market power by independent producers agreeing not to compete, which results in their reaping monopoly profits at the expense of consumers, is a significant anticompetitive effect that barring overriding procompetitive benefits will render such agreements illegal—period. The fact that cartel members are nonprofit institutions or use monopoly profits in part for what they might regard as a worthy cause instead of for shareholder dividends is not a defense, nor should it be. In the present case, if public policy warrants a public subsidy for college athletics, it should be provided directly and with restrictions requiring that the subsidy be used for the desired purposes. It is anticompetitive, economically inefficient, and politically unsupportable to make consumers indirectly subsidize the Alliance members' athletic programs without any restrictions on how that subsidy is to be spent. (And it might be added that not all the profits go for the benefit of student-athletes. A substantial amount goes to increase the salaries and perquisites of the conference commissioners, athletic directors, and coaches—the de facto equity owners of the "nonprofit" college football enterprise).

In short, the Alliance has substantial anticompetitive effects that are caused by the market power the Alliance arrangement creates for its members. These effects are (1) reduced output and product quality from relegating 50 Division I–A football teams and roughly a dozen bowl games to lower and permanent second-tier status, and possibly forcing many of them to go out of "business,"and (2) monopoly pricing of the four Alliance post-season football bowl games which causes a significant wealth transfer of consumer surplus from consumers of post-season football to the 63 Alliance members. In a rule of reason trial, these anticompetitive effects would have to be balanced against the procompetitive benefit of providing a national championship game every year. How a jury would decide the matter is far from certain. However, two further points should be made in this regard.

a. The rule of reason balancing guidelines

The law is not clear about how juries should be instructed to balance pro- and anti-competitive effects when there is a significant presence of both. Most Supreme Court and circuit court decisions in this area involve cases where the issue presented is whether one side of the equation so clearly overwhelms the other that granting summary judgment for one side or the other is appropriate. There is precious little guidance about how juries should be instructed to balance the apples and oranges of pro- and anti-competitive effects when the balance does not obviously and strongly tilt in one direction.

My own view, and probably the best interpretation of the caselaw, is that because antitrust is aimed specifically at aggregations of market power that injure consumer welfare, once a plaintiff establishes significant anticompetitive effects, the burden is then on the defendant(s) to prove that procompetitive benefits clearly and substantially outweigh those negative effects. Put another way, the logic of the Sherman Act suggests that in a rule of reason balance, the tie goes to the plaintiff—or alternatively, that once the plaintiff has established a prima facie case of significant anticompetitive effects, the burden is on the defendant(s) to prove by clear and convincing evidence that there are procompetitive benefits that more than justify the negative effects.

If this is an accurate characterization of the law, it would increase the likelihood that a jury would return a verdict against the Alliance. Clearly the Alliance has significant anticompetitive effects, and it is not clear that the procompetitive effect of producing a championship game every year would be found by a jury to be sufficiently clear and substantial. This is particularly so because in my judgment most of the equities in the case that influence jury perceptions are against the Alliance.

b. Less restrictive alternative doctrine

The Alliance also suffers by the often referred to but conceptually elusive "less restrictive alternative" doctrine. I have done a fair amount of research on this doctrine and have so far concluded only that nobody really knows what it is, what it allows plaintiffs to allege or attempt to prove, or how juries should be instructed to factor it into the analysis. However, many courts have applied some form of less restrictive alternative notion in rule of reason cases, and virtually none have rejected it outright. Thus, the presence of a less restrictive alternative (whatever that means) can only hurt the chances of defendants prevailing with a jury in a close case. Since in the Alliance's case, a national championship game could be produced (i.e., the same procompetitive benefits achieved) under arrangements that would cause far less injury to the market and consumer, this further increases the likelihood that the Alliance scheme would be found illegal.

An agreement among every Division I–A school (or a one-game event run directly through the NCAA structure) that would select one bowl or site for a matchup of the number one and two ranked teams every year (with the bowl or site being rotated annually among maybe a dozen locations), at a time somewhat removed from the other bowl games, would produce exactly the same procompetitive benefit as the Alliance. However, all of the other bowls would then be on an equal basis in a free market to compete for all of the remaining teams, and none would be permanently relegated to second class status or put at risk of being forced out of the market altogether. Further, the revenues generated from the national championship game, after paying the two participating teams a reasonable premium (perhaps $1 million each) for their costs and success, would be allocated in a reasonable manner among all of the 113 or so Division I–A schools, in much the same way revenues from the NCAA men's basketball tournament are distributed today. This would not give any conference or its members the special prestige of being guaranteed an "Alliance" bowl spot or a huge monopoly payout, no matter how good or bad they may have been that year, and it would not relegate any Division I–A conference or school to an artificially created second class status or risk of being driven out of playing Division I–A football altogether. The free market would thus decide which schools played in which post-season games and which schools and conferences got the payouts associated with those games (other than the championship game itself), not some predetermined scheme invented by six conference commissioners who have decided that their conferences are always and forever worthy of being among the elite while the other conferences never are.

As for monopoly pricing, the fact is that if there is going to be a championship game, it will be sufficiently unique and attractive that whoever controls it will have monopoly market power in selling it. Thus, if we want consumers to have the benefit of such a game, absent direct government regulation,[4] consumers of that game will undoubtedly be charged supercompetitive (i.e., substantially above cost) prices. However, in an industry where the quality and quantity of the output depends on maintaining athletic competitive balance across the industry, it is crucial that revenues be distributed in a manner that allows all teams to remain viable. Thus, while there will be monopoly pricing of a national championship game (absent direct government regulation), the revenue derived from that can be shared in a manner that allows all Division I–A schools to field viable competitive teams. Otherwise, the consumers (i.e., fans) of these schools will suffer from diminished product quality, and if a school is forced to drop football altogether, from diminished output as well.

Thus, without direct regulation, there is little that can be done to diminish the anticompetitive effect of monopoly pricing. However, the Alliance's anticompetitive effect of driving 50 Division I–A teams and a dozen or so bowl games into a lower and permanent second tier status can be largely avoided while the procompetitive benefit of having a national championship game can still be preserved. If the less restrictive alternative doctrine means anything, this must be a classic example of where it should be applied to weigh against the Alliance arrangements. (In fact, this is the one ground upon which a court might determine the Alliance to be illegal as a matter of law on summary judgment.)

In conclusion the Alliance creates both pro- and anticompetitive effects that would likely have to be weighed by a jury in a rule of reason trial. The equities against the Alliance, the fact that in close cases a substantial burden probably falls on defendants to justify their anticompetitive agreements, and the presence of a clear less restrictive alternative all suggest that the verdict would likely be against the Alliance. But as any antitrust litigator knows, such verdicts are unpredictable.

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[4] Such regulation would be entirely appropriate. "Owning" a national championship game would necessarily give the entity natural monopoly power, and the generally accepted remedy for curbing the power of a natural monopoly is government regulation. It would be quite justified for some agency of the government to establish maximum prices that an entity putting on a championship college football game could charge in order to protect the public from having all of the consumer surplus generated by such a game flow to the producers of it. However, I mention this merely in a footnote because I fully recognize that the political mood of the country is strongly against big government and government regulation and that Congress probably has little desire or political will to impose such price regulation on the college sports industry. That being so, however, Congress has little ground to complain when sports consumers are charged enormous monopoly prices for the game in the form of ticket prices and sponsorship and television rights fees.

II. THE REAL EVIL OF THE ALLIANCE—THE ELEVATION OF COMMERCIALISM OVER THE TRUE VALUES OF COLLEGIATE ATHLETICS

While I believe that the Alliance raises some serious antitrust issues, and that a challenge could come out either way in litigation, I am firmly opposed to the Alliance for other reasons—namely, that it undermines the fundamental values that underlie intercollegiate athletics. College sports is not supposed to be about commercialism or even maximizing consumer welfare. The fact that we even consider this industry from an antitrust perspective unfortunately suggests that it is one, like all industries, whose legitimacy should be measured by whether it maximizes the welfare of consumers in the commercial marketplace—yet that is not and should not be what college sports is all about.[5]

Intercollegiate athletics is supposed to be about education and amateur student-athletes. We should run our programs with the primary emphasis on optimizing the welfare of the young men and women who play sports while they are getting their education. We should try to preserve the amateur nature of this enterprise and be always vigilant of the need to preserve the academic and moral integrity of the institutions of higher learning upon which our nation's future depends. To turn this amateur athletic enterprise designed to give students an extracurricular activity through which to broaden their horizons into a purely revenue driven commercial business that caters to the welfare of consumers is a perversion of the values for which it was founded and should stand.

This is why the Alliance is so offensive—it accelerates and magnifies the perverse commercial motivations and values that have all too much corrupted intercollegiate athletics. Of course, athletics departments need money to operate and provide good athletic opportunities for student-athletes. But our desire to generate these needed revenues has gone wildly out of control, creating a financial and commercial "arms race" among schools that creates a never ending upward spiraling need for more revenues in order to beat the other guys. The tragedy is that in our never-ending rush to make more and more money, we have lost sight of our real purpose—to educate and broaden opportunities for young men and women. Today, our purpose is all too often simply raising revenue, and the students whom we are supposed to be serving all too often become the exploited pawns in our fanatic drive to pay coaches more and more and to build grander and more beautiful arenas and stadia. The Alliance is the ultimate corrupt symbol of this noble idea run amok.

What the Alliance does, all for the purpose of raising more revenues for its members, is tell thousands of student-athletes at 50 non-Alliance schools that they are not worthy of participating in Division I-A. If this were the NFL and professional athletes whose job is to produce a product for public consumption, I would not object. But this is about kids and participation opportunities and amateur athletics—or at least it's supposed to be. To deny opportunities to thousands of such young men (and men and women in the other sports at these schools) so that the 63 self-proclaimed "worthy" Alliance schools can make even more money to pay their coaches and athletic directors (and conference commissioners) even huger salaries and live fine lifestyles in plush facilities is a perversion of what this industry is all about.

What the Alliance also does is create enormous economic and political power in the hands of the Alliance power-brokers—the six conference commissioners who do not work on college campuses and who are unaccountable for anything but the profits they are able to generate for their member schools. This in turn relatively weakens the influence of the NCAA itself. While much criticism has justifiably been leveled against the NCAA for various things over the years, it is still a far preferable entity to govern college sports than this self-appointed clique of conference commissioners who care only about revenues and think that only their schools and students are worthy. The NCAA is a highly visible nonprofit organization with over 900 members, run in Division I by a board of college presidents, that has a much broader perspective and mission than simply maximizing profits for a group of 63 schools. Whatever its faults, taking power and influence away from Cedrick Dempsey and his staff, and the board of presidents, who are all charged with the difficult task of protective amateurism, academic integrity, and the welfare of student-athletes against the pressures of commercialism, and giving that power to six unaccountable conference commissioners is pernicious and harmful to the principles and values of intercollegiate athletics and even higher education.

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[5] Several courts over the years have recognized this fundamental difference of intercollegiate sports as an industry in rejecting antitrust challenges to various NCAA rules designed to create competitive balance among the schools, define amateurism, and the like, essentially on the basis that the NCAA is not a commercially driven business, but rather one that promotes noncommercial values that antitrust cannot address. *See, e.g., Banks* v. *NCAA*, 977 F.2d 1081 (7th Cir. 1992)(rule making player declaring eligibility for NFL draft ineligible is not illegal); *McCormick* v. *NCAA*, 845 F.2d 133 (5th Cir. 1988)(eligibility rules and "death penalty" are not illegal): *Hennessey* v. *NCAA*, 564 F.2d 1136 (5th Cir. 1977) (rule limiting number of football assistant coaches is not illegal). Thus, the merits of schemes affecting college athletics cannot and should not be judged solely or primarily on their impact on consumer welfare, but rather on their impact on the basic principles underlying the enterprise.

If the Alliance is to be allowed to take control of intercollegiate football and make its highest level the permanent protected property of 63 athletic programs, all so those 63 can squeeze even more revenue out of the public, then there is little doubt that Division I–A college football has crossed the line from being an amateur sport to being a purely commercially driven business. If so, its entire set of rules and regulations should be subject to antitrust scrutiny, from its limiting the compensation of the athletes to a scholarship (price fixing) to limiting the number of games (output restrictions) to limiting the number of coaches (quality restrictions) to whatever.[6] Likewise, the athletes should be treated as employees, protected by workers compensation, the National Labor Relations Act, and OSHA. Football programs should be taxed as commercial businesses. These 63 schools should not be allowed to have their cake and eat it too—to have as their primary objective commercial revenue maximization while being allowed to avoid antitrust, labor, tax, and other laws on the ground that big-time football is just a college extracurricular activity.

III. ANTITRUST ENFORCEMENT AGAINST THE ALLIANCE IS UNLIKELY

Despite the fact that a strong antitrust challenge could be made against the Alliance, and that it is a perversion of what intercollegiate athletics is supposed to be about, a serious legal challenge is unlikely to happen because of the tremendous coercive political and economic power of the members of the Alliance. One cannot overstate the tremendous economic and political influence of the major college sports interests at the 63 Alliance schools and their conferences. In state after state, the football and basketball coaches at State U. are extraordinarily popular and influential, as are the wealthy and influential boosters of those schools, most of whom are members of the Alliance. This gives the conference commissioners and athletic directors involved in the Alliance the ability to deter serious challenges to it, whether those challenges be by private or government plaintiffs in the courts or in Congress.

The only conceivable private plaintiffs would be (1) the four Alliance bowls who are being forced to make monopoly payments, (2) ABC which is also being charged a monopoly fee, (3) the excluded bowls, or (4) one or more of the 50 excluded Division I–A schools. But none of these entities is likely to engage in an expensive, protracted, and politically dangerous legal war against the enormous power and influence of the Alliance.

The people who head up all of the likely challenger organizations are themselves integral players in the intercollegiate sports industry, which by its nature requires a large degree of cooperation and interdependence among the schools, conferences, bowls, television people, and others who make production and delivery of this entertainment product to the public possible. The NCAA exists precisely because of the inherent interdependence and need to cooperate in order to produce athletic competition. Just as an example, a refusal by the 63 Alliance schools to schedule games in any sport against a school that participated in a legal challenge against the Alliance would essentially be the death of that school's athletic program.

Furthermore, management jobs in this industry are extremely mobile. The executive director of a bowl, the commissioner of a conference, or the athletic director at a school today was probably in a different job only a few years ago and will likely be looking for another job a few years hence. None of them wants to alienate key people in the business or to become the pariahs of the industry. The commissioners of the Alliance conferences and the athletic directors and football coaches at their 63 member schools are among the most powerful and influential people in college sports today. Thus the fear of being boycotted or ostracized by this powerful group will likely deter most would-be private plaintiffs. (Intercollegiate athletics has often been called a "good old boys network," and the Alliance power brokers are among the first and foremost of those good old boys.) The only one rattling its sabres today is the Western Athletic Conference (the WAC) and its commissioner, Karl Benson, and it is set to be determined if it has the financial and political will to mount a serious legal attack. Rumor has it that Mr. Benson has already been completely ostracized by his fellow commissioners and will never get another top job in the industry.

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[6] For a discussion of the antitrust implications of treating intercollegiate athletics as a commercial business, see my recent law review article, Roberts, *The NCAA, Antitrust, and Consumer Welfare*, 70 TUL. L. REV. 2631 (1996).

Furthermore, excluded conferences like the WAC and Conference USA, the most likely private plaintiffs, might have trouble persuading a court that they have the type of antitrust injury necessary to give them standing to sue. This is a complex issue that guarantees substantial legal expenses for such a plaintiff without any guarantee that the result will be favorable. Also, the only likely remedy for an excluded conference would not be treble damages, since they have not been directly damaged in a monetary sense as the participating bowls have, but rather would be an injunction against the continuation of the Alliance scheme. Thus, the WAC or Conference USA would have to fight an expensive and protracted legal battle against a determined, well-healed defendant with no likely monetary reward at the end (other than attorneys fees)—while in the process being treated as the lepers of college sports by the powerful Alliance.

This leaves the federal enforcement agencies. The FTC will not take any action because it does not have jurisdiction over nonprofit entities, which the Alliance all are. The Antitrust Division of the Justice Department could get involved, but it has shown a remarkable lack of will to do so. In early 1996 I had three lengthy conversations with two lawyers from the Antitrust Division who were looking into the original Alliance, yet suddenly their interest disappeared and no further investigation was made. I can only speculate why they lost interest, but the political clout of the Alliance members cannot be dismissed. As noted above, the ability of the athletic establishment at the Alliance member schools in many states—the athletic directors, the football and basketball coaches, and wealthy and/or powerful athletic boosters—to mobilize the media and public opinion to their point of view is enormous. One can only guess what political influence was brought to bear on the Antitrust Division to make it lose interest in challenging the Alliance.

The upshot is that neither potential private plaintiffs nor the government enforcement agencies are able and likely to bring a substantial legal challenge against the Alliance with its enormous economic and political power. If this likely violation of antitrust law and blight on the interests of both the public and college athletics (other than at the Alliance member schools) is to be checked, it will most likely have to come from Congress (although I am not sanguine about this possibility either given the substantial influence of the Alliance and its member schools over a large number of members of Congress as well).

CONCLUSION

Whether the Bowl Alliance is illegal under section 1 of the Sherman Act is debatable. If challenged in litigation, the case would probably go to a jury after an expensive and protracted proceeding. I believe that the odds favor a jury finding of illegality, but that is far from certain.

Nonetheless, I believe that the Bowl Alliance is fundamentally pernicious, not because it causes injury to consumer welfare or violates antitrust values, but because it undermines the greater values that higher education and intercollegiate athletics are supposed to promote—the values of providing developmental opportunities for, and protecting the welfare of, young men and women pursuing higher education, of promoting amateur athletics, and of protecting the academic and moral integrity of our nation's colleges and universities. Intercollegiate athletics in football and men's basketball have already travelled too far down the path of commercialism and exploitation, but we at least still struggle through the NCAA to try to maintain the difficult balance between the need for revenue and the values the enterprise is ultimately all about. The Bowl Alliance represents nothing but the unchecked drive to maximize the revenues of 63 football programs at the expense of every value for which intercollegiate sports stands. Since a legal challenge to it is unlikely, Congress should take the lead in abolishing the Alliance and returning the "business" of running college sports to the NCAA.

Senator DeWine. David Baker is the special assistant to the president at the University of Wyoming. Mr. Baker is responsible for a number of areas, including legal affairs and intercollegiate athletics, and he has previously been involved with the intercollegiate athletics program at Louisville as well.

Mr. Baker, thank you for joining us. You may proceed.

STATEMENT OF DAVID L. BAKER

Mr. BAKER. Thank you. You have heard from Richard Peace about our 1996 football season. I would like to note, however, to everyone that Richard is a mechanical engineering major, in addition to his other obvious thespian accomplishments.

The 1996 football season at Wyoming was not just a winning season. This team produced three All-Americans. It had two GTE Academic All-Americans. It placed eight members on the Western Athletic Conference All-Academic Team. Its coach was honored by his profession as the Region 4 Coach of the Year. This is what our school and our State believes intercollegiate athletics should be about. These are values we share with our Senators, Senator Thomas and Senator Enzi.

Wyoming is a large State with a small population. We have pride and toughness. We believe our football program reflects the values of our State. In Wyoming, a really big football crowd is 30,000 people. That is almost 7 percent of the total State population. That is like a turnout of 600,000 in Michigan or 750,000 in Pennsylvania.

The conventional wisdom is that the Alliance conferences play a better brand of football and deserve the lion's share of exposure and revenues. But that is not how it works, as you have heard today. You have heard all about the Alliance bowls, but that is only part of the story. The Alliance conferences also have multiyear contracts to control participation in most of the so-called less bowls.

The 1997 bowls are already set for the most part. For instance, the Peach Bowl will match up the fourth selection and the Atlantic Conference No. 3 team. Despite what Mr. Kramer says, I don't think that is a historical match-up. Or check the Gator Bowl. The No. 2 pick from the Atlantic Coast Conference will play the second pick from the Big East. All this is already tied down contractually, all before the first team takes the field or the first kickoff is returned, and virtually all of these deals were in place last year.

To meet the terms of these deals, eight Bowl Alliance participants got bowl bids even though they were not ranked at all. Two of these teams had losing conference records, and that in a nutshell is why there was no place for the University of Wyoming when all the bowl deals were played out in the 1996 football season.

There is a very real question as to whether the general public even has a clue as to what went on. The public is still being told these are bowl bids or that these are bowl invitations. Is this a violation of the antitrust laws? Good question. The Bowl Alliance is paying out serious money to some of the best lawyers in America to insulate them from that charge.

But as you have noted and I note, no one from ABC TV, with the TV rights to two-thirds of all the bowls and a financial interest in 70 percent of the conference TV packages, has stepped forward to explain the role TV plays in all of this. I would point out that ABC did narrowly miss a bullet in the last antitrust action that was taken with the CFA and ABC-Cap Cities when that was dismissed without prejudice.

I also regret that no university president from the NCAA board of directors is here today to benefit from these panel discussions. It is time for the leadership of the NCAA to consider that greed should not be an attribute to be rewarded by these leaders of

American higher education. I might add that the University of Wyoming voted against the NCAA governance structure that was discussed earlier, and also that we really seriously believe this is a matter of legitimacy as to who is running college sports.

Senator DeWine. Excuse me, Mr. Baker. Wyoming voted against what? I didn't understand that.

Mr. Baker. When the NCAA voted to restructure the governance to place a majority in the hands of the Alliance presidents, the University of Wyoming saw that as an exercise in self-denial, really, to vote for a structure that would forever foreclose us from the prospect of the very top tier of participation.

Senator DeWine. Thank you.

[The prepared statement of Mr. Baker follows:]

Prepared Statement of David L. Baker

Good afternoon, I am David Baker, Special Assistant to the President of the University of Wyoming. Thank you for the opportunity to come before you today to talk about an aspect of college sports that Wyomingites and their University feel strongly about.

Two of the principles we try to teach our children are: No. 1—stand up for what's rightfully yours and No. 2—don't take more than your share.

When the young men on the University of Wyoming football team had a 10–2 season, a No. 22 National Ranking and were excluded from post-season play, the university felt we needed to stand up. This was not just a winning season:

- This team produced three All Americans.
- It had two GTE academic All Americans.
- It produced leaders in several NCAA individual and team statistical categories.
- It placed eight members on the Western Athletic Conference All-academic team.
- Its coach was honored by his profession as the Region 4 Coach of the Year.

This is what our school and our state believes intercollegiate athletics should be about.

When our team was snubbed we stood up: Our president wrote letters to his presidential colleagues asking for redress. Our representative to the NCAA Convention made vigorous objections on the convention floor. We backed our Conference in calling for an NCAA study of post season play. And, when all these efforts were brushed aside, we came to Washington and brought our case to our Senators—Senator Thomas and Senator Enzi.

Wyoming is a large state with a small population. We have pride and toughness. We believe our football program reflects the values of our state. We are always competitive; but we can never be a sports dynasty. In Wyoming, a really big football crowd is 30,000 people. That's almost seven percent of the total state population. That's like a turnout of 600,000 in Michigan or 700,000 in Ohio or three quarters of a million in Pennsylvania. We do not fear failure; but we resent being marginalized and victimized by the sports establishment. We do not want the big time football powers and network TV executives assigning Wyoming football to a second tier. And that's where we'll be as long as the big time schools can tell recruits, "You can go to Wyoming, but you will never play in a bowl game." I am here because the University feels obliged to stand up for its student-athletes.

A member of our 1996 Football Team, Richard Peace, a civil engineering major, is speaking to you today to let you know how this set of circumstances affected him and his teammates. I am here to share with you why I believe it happened.

The reason is simple: The College Bowl Alliance took more than their share. I would submit that they wanted—and took—as much money as they could grab. Recognition of achievement took a back seat. The promotion of intercollegiate competition was irrelevant.

- Eight Bowl Alliance participants split up about $64 million last year.
- Twenty-eight other schools divided about $35 million.
- Of that $35 million, less than $4 million went to non-Alliance participants.

The conventional wisdom is that the Alliance Conferences play a better brand of football and deserve the lion's share of the exposure—and the revenue. But, that's not how it works.

- Every Conference in the Alliance will each get a New Years Day bowl bid for its champion—no matter what their national ranking. That is guaranteed by a long-term contract.

- So, last January we saw Alliance Conference participants which were rated No. 20, No. 10, No. 7 and No. 6 stepping up to collect about $8.5 million each. While Brigham Young University, ranked No. 5 in the nation, was relegated to a post-season bowl that paid $2 million.

And, that is only part of the story. The Alliance Conferences also have multi-year contracts to control participation in most of the so-called "lesser bowls."

Just take a look at the information taken from last week's NCAA News to see who will be playing in the Bowls after the 1997 Football Season. If you are a Southeastern Conference fan, you will see:

- Florida Citrus Bowl—SEC second selection v. Big Ten #2 team
- Outback Bowl—SEC third selection v. Big Ten #3
- Peach Bowl—SEC fourth selection v. Atlantic Coast #3
- Independence Bowl—SEC fifth selection v. An At-Large Team

Or, check the Gator Bowl to learn that the #2 pick from the Atlantic Coast Conference will play the second pick from the Big East.

All of this is already tied down contractually. All before the first team takes the field or the first kick off is returned. And, virtually all of these deals were in place last year. To meet the terms of these deals, eight Bowl Alliance participants got bowl bids even though they were not ranked. Two of these teams had losing conference records. Only one Bowl Alliance school with the NCAA minimum record to qualify for post-season play had to stay home. And that, in a nutshell, is why there was no place for the University of Wyoming when all the bowl deals were played out for the 1996 season. There is a real question as to whether recognition of achievement or promotion of intercollegiate competition has any place at all in this culture of Big Time Football. And there's a very real question as to whether the general public has been given even a clue as to what's going on. The public is still being told these are "bowl bids" or "bowl invitations."

Is this a violation of the anti-trust laws? Good question. The Bowl Alliance is paying out serious money to some of the best lawyers in America to insulate them from that charge. But I note that no one from ABC, with TV rights to two-thirds of the bowls and a financial interest in 70 percent of the conference TV packages, has stepped forward to explain the role TV plays in all of this.

I have submitted to the Subcommittee a background statement which attempts to put the position of the University of Wyoming into a broad perspective. It all comes down to this: It's time somebody stood up to say what's right and what's wrong with the present bowl system. I regret that no University President from the NCAA Board of Directors could be here today to benefit from these panel discussions. It's time for the leadership of the NCAA to consider that greed should not be an attribute to be rewarded by the leaders of American Higher Education.

Senator DEWINE. Our next witness is James Delany, who has been the commissioner of the Big 10 Conference since 1989. Prior to this, Mr. Delany was the commissioner for the Ohio Valley Conference. In addition, he currently serves on the USA Basketball Executive Committee and as the president of the Collegiate Commissioners Association.

Mr. Delany, thank you very much for joining us.

STATEMENT OF JAMES E. DELANY

Mr. DELANY. Thank you, Mr. Chairman. Let me just tell you a little bit about the Big 10. We have 11 institutions in the Big 10, and so maybe our ability to rank and count is maybe no better than the writers at this point. We have 400,000 students under roof at those 11 universities, and we have over 3 million living alumni dispersed around the country.

As far as the intercollegiate athletic programs are concerned, we have 250 men's and women's teams, over 7,000 participating men and women student-athletes, and over $50 million of financial aid going to those student-athletes. So we are very proud of the comprehensive, broad-based programs that exist in the Big 10 and we think it is a real opportunity engine. All but a small fraction of the revenues used to finance this are generated by the programs themselves and they are not in competition with other departments in the university for funding.

I appreciate the opportunity to be here today to discuss the College Football Bowl Alliance and the Big 10's role in it. As Mr. Kramer noted, we believe that the Alliance is good for college football and its fans. It does create the opportunity for a championship game, and we believe it strengthens the bowl system that has added excitement to college football for over 80 years. I would like to focus my remarks on the Big 10's role in the Alliance.

For more than 50 years, our champion has been rewarded with a New Year's Day match in the Rose Bowl against the Pac–10 champion. The Rose Bowl is part of the fabric of life in the Big 10 and the Midwest. All of us associated with Big 10 football cherish this partnership and have been reluctant to alter it in any way. For that reason, as well as our contractual relationships with other bowls, we did not participate in the bowl coalition.

The formation of the Bowl Alliance, however, increased the chances of a national championship game and began to change our thinking. That review got a push in 1994 when our conference champion, Penn State, completed an unbeaten regular season with a solid Rose Bowl win over a good Oregon team, but was ranked No. 2 behind Nebraska. Many in the conference began to feel that Big 10 teams should have a chance to win a national championship on the field if they earned it.

At the same time, the Big 10 has, and continues to oppose an NFL-style college football playoff. We believe it would undermine the bowl structure by diminishing interest in all other post-season games. Over time, we believe it would drive other bowls out of business, depriving hundreds of athletes the opportunity for post-season competition. We also believe that it would complicate and multiply the demands and pressures on the athletes that are now in school. We believe that the Alliance has found a way to arrange a championship game without the drawback of a playoff system.

The challenge for the Big 10 was how to give our champion a potential spot in the championship game without destroying the Rose Bowl tradition. The negotiations were very difficult, both internally and externally—conversations with our coaches, student-athletes, athletic directors, and presidents. In a very real sense, this change involved a dramatic change in the way we view life in college football in the Midwest.

In the end, we altered our traditional Rose Bowl arrangement to ensure a national title game. We also agreed that in January 2002, our champion, unless ranked one or two, would not play in the Rose Bowl for the first time in 57 years so that the Rose Bowl could host the championship match that would be available to any I–A member institution. In exchange, we insisted that our champion be ensured a spot in an Alliance bowl—compensation we felt only fair for giving up the exclusive control over the Rose Bowl which we feel like we have built equity in over the last half century.

Finally, some in our conference still wonder if we made the right choice. In January 2002, when the Rose Bowl hosts the title game, the Big 10 champion will not play in the Rose Bowl for the first time in 57 years unless it is ranked one or two. That means that

109

these Big 10 athletes will miss out on what may be a once-in-a-lifetime opportunity to play in Pasadena in this half-century-plus New Year's Day game. That is a big sacrifice. On balance, we believe these changes are good for the Big 10 and for college football fans, who for the first time will be virtually guaranteed a championship game. The Big 10 is pleased to be part of it.

So while there is a good bit of complexity, we feel that the situation is improved from our perspective. The way the story has been explained and the impact it has had on people sometimes makes it appear that people are just helping themselves at the trough, when, in fact, I think that the conferences who have involved themselves, including the Big 10, have made dramatic sacrifices and changes in relationships that they have developed over a long period of time in order to bring about a game that we think the American public is desirous of seeing.

Thank you.

Senator DEWINE. Mr. Delany, thank you very much.

[The prepared statement of Mr. Delany follows:]

PREPARED STATEMENT OF JAMES E. DELANY

Good Afternoon Mr. Chairman and Members of the Subcommittee: My name is Jim Delany, and I am the Commissioner of the Big Ten Conference. I have held that position for the last 8 years, and prior to that I was Commissioner of the Ohio Valley Conference for 10 years. During my own college days, I played basketball at the University of North Carolina under Coach Dean Smith. That was a wonderful experience for me, enabled me to get a first-rate education, and prepared me to seek a law degree, which I also obtained from North Carolina. As a student-athlete, I twice had the opportunity to play in the NCAA Final Four. I understand the thrill of competing for a national championship, and although we did not win a national championship while I was at North Carolina, playing in the Final Four was among the highlights of my athletic career. I very much appreciate the opportunity to speak with you today about the college football Bowl Alliance and the Big Ten's role in it.

As Commissioner Kramer has previously mentioned, the Alliance has brought substantial benefits to college football and its fans, and serves to strengthen and preserve the bowl system, which has been an integral part of college football for more than 80 years. Commissioner Kramer has given a good history of the development of the bowl system and prior college football bowl arrangements before the Bowl Coalition. I will not repeat what he has said but instead focus my remarks on what I believe is a unique Big Ten perspective.

The member institutions of the Big Ten, as I believe is true for most conferences, have long felt it important that the Big Ten champion have a guaranteed slot in a bowl game as a reward for its success. In that regard, we, along with the Pacific-10 Conference, have had a very close relationship with the Pasadena Tournament of Roses Association, the sponsor of the Rose Bowl, for more than 50 years. During the last five decades, our conference champion has appeared each New Year's Day in the Rose Bowl game. A Rose Bowl berth has become the traditional prize for the champion of our conference, and the chance to compete for a Rose Bowl bid has added immeasurably to the excitement of our regular season conference games. Needless to say, the Big Ten and all of its member institutions cherish our longstanding arrangement with the Rose Bowl, and we have done our best through the years to nourish and develop those ties.

Because of that close and traditional relationship with the Rose Bowl, our conference did not participate in the original Bowl Coalition. The Coalition did not alter existing relationships between the participating conferences and bowls, but simply created a structure for selection of teams within the framework existing at the time. While we believed at the time that the Coalition was a step in the right direction, the Big Ten champion was contractually committed to play in the Rose Bowl. Thus, we could not commit our champion to the Coalition arrangement and had no interest in altering our arrangement with the Rose Bowl. With respect to our runner-up teams who might have participated in the Coalition arrangements, we also had contractual relationships with several fine bowl games, and our members decided that it was in the best interest of the conference to develop those relationships. That is what we chose to do.

The formation of the Bowl Alliance began to change the thinking of some of the member institutions in the Big Ten. The Alliance increased the likelihood of a national championship game. In 1994, Penn State, one of our members, completed an undefeated season, but was ranked number two by both of the major polls despite a solid victory over a fine Oregon team in the Rose Bowl. That disappointment left some Big Ten institutions looking for a way to participate in a national championship game. At the same time, none of our institutions were willing simply to give up our traditional relationship with the Rose Bowl completely in order for our conference champion to participate in the Alliance arrangement. Moreover, unlike the other conferences who are part of the Alliance, our existing affiliation agreement with the Rose Bowl did not expire after the game played on January 1, 1995. We were contractually committed to send our champion to the Rose Bowl at the time the Alliance was formed, and there was simply no time for us to rearrange our relationship with the Rose Bowl in a way that would permit our champion to participate in the Alliance arrangement. As a conference, however, we believed and still believe that the Alliance arrangement is good for college football and its fans by substantially enhancing the likelihood of a national championship game. We also believe that it has strengthened and enhanced the bowl system, which has provided outstanding postseason experiences for literally thousands of student-athletes over the years. The Big Ten has in the past and continues to be opposed to an NFL-style college football playoff. Therefore, with the exception of our conference champion, we agreed to make all of our teams available to participate in the Alliance arrangement, which we could do without reworking any of our contractual relationships with other bowls.

At the time the Alliance was formed, the Big Ten and Pac-10 were keenly aware that our respective relationships with the Rose Bowl might prevent the Alliance from matching the top two teams in the nation in any particular year. Sometime after that Alliance contract was signed, I was approached by some of the presidents of our institutions to ask if there was some way we could make our champion available to play in a national championship game. When I began to have discussions about this matter with all of our institutions, there was a wide divergence of opinion within the conference. It was clear that we could not participate fully in the Alliance arrangement without some alteration of our traditional relationship with the Rose Bowl and the Pac-10. Some institutions in the Big Ten thought that was simply too high a price to pay to play in a national championship game. After much internal discussion, the conference reached a consensus that it was willing to commit its champion to play in a national championship game provided that we could continue to send our champion to the Rose Bowl in those years in which we did not have a team ranked number 1 or number 2. We then begin the process of discussing the matter with the Pac-10, the Tournament of Roses Association, and ABC television, which held the television rights to the Rose Bowl through the year 2001 and which had previously indicated to us that it was interested in integrating the Rose Bowl into the Alliance arrangement in some fashion.

These were lengthy and difficult negotiations. Because of the history and traditional relationship between the Big Ten, Pac-10, and Rose Bowl, it was difficult for any of these entities to contemplate alterations. Throughout those discussions, it became increasingly clear that any proposal for integrating the Rose Bowl into the Alliance would require that the Rose Bowl be given an opportunity to host a national championship game. That inevitably meant that the Big Ten and Pac-10 champions might not play in the Rose Bowl in that particular year if not ranked among the top two teams in the nation. Accepting that aspect of integration of the Rose Bowl into the Alliance arrangement was particularly difficult for the Big Ten and, I know, for the Pac-10 as well. The discussions in our conference took several months, and the member institutions had varying opinions on the matter. Ultimately, however, we made a decision that we would work with the Rose Bowl and the Pac-10 to craft a proposal to enable ABC to put together an attractive package to discuss with the other members of the Alliance and to integrate our respective champions into the Alliance arrangement following the 1998 regular season.

Mr. Chairman, I want to emphasize what a difficult task this change was for the member institutions of the Big Ten. An invitation for our champion to play in the Rose Bowl is part of the fabric of our conference. We truly believe that the history and tradition of that game is unmatched, and the Rose Bowl has been the traditional prize sought by our teams. We do not lightly consider altering that traditional relationship, which has been so good for our conference and which has provided such an outstanding post-season experience for so many student-athletes at Big Ten institutions over the years. At the same time, we understand that there is a great public demand for a national championship game to bring some closure to the college football season, and we would like to be part of the effort to bring that about and to give our student-athletes an opportunity to compete in such a game. We are willing to alter our traditional relationship with the Rose Bowl but only if our champion is able to participate in a national championship game. By the same token, we also recognize that the Rose Bowl must be allowed to host a national championship game as part of its participation in the Alliance arrangement. We are also willing to give up our slot in the Rose Bowl that year if our champion is not ranked either number 1 or number 2 but only if our champion is guaranteed a slot in another Alliance bowl. We believe that such a guaranteed slot is fair because, in the absence of our participation in the Alliance arrangement, our champion would have the opportunity every year to compete in the Rose Bowl. In a very real sense, we are dramatically changing a traditional relationship of some half-century's duration in order to make a national championship game possible and to permit the Rose Bowl to be integrated into the Alliance arrangement. Therefore, those guarantees are integral to our participation in the Alliance arrangement, and without them, there is certainly no interest among the member institutions of the Big Ten to alter our traditional relationship with the Rose Bowl. We believe that the new Alliance arrangement allows us to contribute to the improvement of college football and the bowl system while at the same time maintaining our traditional and valued relationship with the Rose Bowl and the Pasadena Tournament of Roses Association.

On balance, we believe that the change in that relationship is good not only for the Big Ten but also for the fans of college football who will soon, for the first time in the history of the game, be guaranteed a bowl game matchup between the number one and number two teams every year. We look forward to participating in the Alliance arrangement. Again, Mr. Chairman, on behalf of the member institutions of the Big Ten, I appreciate the opportunity to speak with you today about these matters.

Senator DEWINE. Our next witness is Chad Lewis, who was the starting tight end for Brigham Young University and was chosen for the CFA All-Academic Team. He has been drafted by the Philadelphia Eagles of the NFL.

Mr. Lewis, thank you very much for joining us.

STATEMENT OF CHAD LEWIS

Mr. LEWIS. Thank you. You know, the fact that I am here today, I think, is testimony to the success of college football. I have played for the last 4 years at BYU under one of the greatest coaches of all time, Coach LaVell Edwards.

I started playing football as a walk-on, and I am sure you know what that is. So I was given a fair chance to showcase my talents at BYU and eventually earn a scholarship, and this has led to signing a contract to play for the Philadelphia Eagles, for whom I report to minicamp next week. I am truly grateful to my coach, BYU, and college football for giving me the opportunity to chase my dream. The only thing I expected was a fair shot, and that is exactly what I received.

This past year, our football team came together and we worked our hardest and we ended up setting the NCAA record for most wins in a season with 14. We beat some great teams, including nationally ranked Texas A&M, Wyoming, and Kansas State. Our only loss was to a very good Washington Huskies team in Seattle.

We were invited to play in the Cotton Bowl on New Year's Day against Kansas State, and without discrediting the Cotton Bowl and its historic tradition, as players we thought we deserved the chance to play in one of the Alliance bowls which were set up to match the Nation's best teams to play for a national championship. However, it seemed clear to us that it was money and not fairness that was driving the Alliance.

As a team, we wanted to be matched up against the best competition, and do that in a spirit of sportsmanship to be able to showcase our talents. You know, personally, the money was not a factor because we wouldn't have seen any more as players. The money would have gone to the school and to the conference. But the key issue for us was the interest in playing the top competition and the chance to compete for another national championship.

BYU won the title in 1984. We feel like we have proven that we can compete with the very best. As a team, we just wanted what we thought was a fair shot, and that is what I received as a walk-on and that is what we wanted to receive as the fifth-ranked team in the Nation preceding the selection of the teams for the Bowl Alliance. To not invite BYU to an Alliance game was simply unfair. A greater injustice was Wyoming being excluded from all bowls whatsoever.

My only question is the fairness of the Bowl Alliance. Is it fair that a proven and qualified team like BYU was not invited to play in a Bowl Alliance game? Is it fair not to afford every team in the Nation an equal opportunity to excel and shoot for a national championship? Is it fair to allow certain conferences to receive guaranteed millions even though they might not be the highest ranked teams, especially when so many teams are so deep in the red they can barely see their own competition?

The only thing athletes want is a fair chance to compete for the championship. Part of the excitement of sports is the enthusiasm created by a cinderella team beating the odds, and so let's not allow the Bowl Alliance to crush that glass slipper before everyone has a chance to try it on.

Again, I would like to say at this setting how much I love college football. It has been the greatest, and I just think it is set up to afford everyone a chance to chase their dreams and go for the title, and so let's continue to allow them to do that.

Thank you.

Senator DEWINE. Mr. Lewis, thank you very much.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF CHAD LEWIS

To the distinguished members of the Senate Judiciary's Antitrust Subcommittee: The fact that I am even fortunate enough to share my testimony in this setting is proof to me of the success of college football. I have played for the last four years at BYU under Coach LaVell Edwards. Not only is he one of the greatest coaches of all time, he is also a true class act. I feel completely honored to have worked with him through all the ups and downs of my football career. I believe I am a better person because of the association. I started playing football as a walk-on. I was given a fair chance to showcase my talents and eventually earn a scholarship. This has led to signing a contract to play for the Philadelphia Eagles, for whom I report to a minicamp next week. I am truly grateful to my coach, BYU, and college football for giving me the opportunity to chase my dreams. The only thing I expected was a fair shot, and that is exactly what I received.

This past year our football team came together as a team, we worked our guts out, and we ended up setting the NCAA record for most wins in a season with 14. We beat some great teams, including nationally-ranked Texas A&M, Wyoming, and Kansas State. Our only loss was to a very good Washington Huskies team in Seattle. We were invited to play in the Cotton Bowl on New Year's Day against Kansas State. The Cotton Bowl officials truly treated us to a first-class experience that I will never forget. Without discrediting the Cotton Bowl and its historic tradition, as players we thought we deserved the chance to play in one of the alliance bowls, which were set up to match the nation's best teams to play for a national championship.

However, it seemed clear to us that it was money and not fairness that was driving the alliance. As a team we wanted to be matched up against the highest-ranked competition possible and in the spirit of sportsmanship showcase our talents. As players, money was not the issue. We wouldn't have seen any more money personally if we had played in an alliance bowl. The key issue for us was the fair chance to play the top competition and the chance to compete for another national championship. BYU won the national title in 1984. In the last few years we have defeated top teams including number one-ranked Miami, nationally-ranked Penn State, Notre Dame, Texas A&M, and Kansas State to name a few. We feel like we have proven that we can compete with the very best.

As a team, we just wanted what we thought was a fair shot. That is what I received as a walk-on, and that is what we expected as the 5th-ranked team in the country preceding the selection of teams for the bowl alliance. To not invite BYU to an alliance game was simply unfair. A greater injustice was Wyoming being excluded from all bowl invitations whatsoever. My only question is the fairness of the bowl alliance. Is it fair that a proven and qualified team like BYU was not invited to play in a bowl alliance game? Is it fair not to afford every team in the nation an equal opportunity to excel and shoot for a national championship? Is it fair to allow certain conferences to receive guaranteed millions every year, even when their teams are not the highest ranked, while so many schools are playing so far in the red they can barely see their own competition? The only thing athletes want is a fair chance to compete for the championship. Part of the excitement of sports is the enthusiasm created by a Cinderella team beating the odds. Let's not allow the bowl alliance to crush that glass slipper before anyone has a chance to even try it on. Thanks so much for giving me this opportunity to share my feelings.

Senator DEWINE. Our next witness is Tim Layden, who currently works for Sports Illustrated as their senior sportswriter and the magazine's principal college football writer. He has been a sportswriter now for 19 years.

Mr. Layden, thank you very much for joining us. You may proceed.

STATEMENT OF TIM LAYDEN

Mr. LAYDEN. Thank you, Mr. Chairman. I found it interesting today that we have heard a lot of people make reference to college basketball and the NCAA tournament. College basketball isn't college football. They are very different from each other. In college basketball, a team with two or three outstanding players can win a couple of games in the tournament.

College football requires a much greater commitment of money and resources by the university. College football, as a whole, is a much more unmanageable and highly flawed institution that relies on political polls and the money needs of bowls, and I think that that is what drives this entire problem here. I want to say up front that I think the Alliance has been the cleanest answer to those problems that we have ever come up with.

Like most college football journalists, I was very conflicted by what happened last December. In some romanticized vision of what college football could be, Brigham Young belonged in an Alliance bowl. Some of us would have liked to see Brigham Young play Florida State in the Sugar Bowl. It was the most attractive game from, again, a cinderella standpoint, rather than seeing Florida State have a rematch with a Florida team that they had played only a week earlier.

But I understand that they didn't because I do understand the bowls are businesses and that they aren't in business to serve the NCAA or even what the public's vision of what an ideal college football post-season is. I was the person that quoted LaVell Edwards in Sports Illustrated saying the $50 and Ten Commandments quote that Senator Bennett used earlier. It is a funny quote, but if I were the executive director of the Sugar Bowl, it would keep me awake at night thinking about it when I considered whether I should invite Brigham Young to Bourbon Street.

Beyond the financial issue, something that I haven't heard addressed today is the case of whether Brigham Young truly belonged in an Alliance game from a competitive standpoint. You know, we have seen people point to that rankings chart over and over again. With no disrespect to Chad Lewis and his teammates, Brigham Young was 13–1, but they had lost their only game against a ranked non-conference opponent, Washington, 13th on that chart, a good team.

But whether you could say that they belonged in the Sugar Bowl more so than Florida or whether they had a stronger team than Nebraska or Penn State, which were the two other at-large teams picked, I think is something you could argue. Clearly, it would be illogical to say that Brigham Young was clearly better than either of those teams. Polls are unreliable. Coaches vote for their friends. Media people vote for the regions that they live in and the teams that they see play every week. It is unfair to make the case that BYU belonged just because a poll puts them at No. 5.

I think what the Bowl Alliance has done is two things. It has eliminated the mid-season deal-making that we had for so long, and that has been a good thing. It has created the best possible environment, short of a playoff, in which a national championship game can be created, and that will be even better in 2 years when the Rose Bowl gets in. A return to the former bowl system would solve nothing. It would make attractive match-ups more uncommon, and appearances by the likes of BYU in major bowls would still be very rare.

Now, as far as granting the WAC or Conference USA or the Mid-American Conference a guaranteed spot, that is unrealistic, too. Teams from the Southeastern, the Pac–10, Big 10, Big 12, Big East or Notre Dame have won championships in all but one of the last 50 years. The one that BYU did win in 1984 was because everybody else lost and BYU managed to beat a Michigan team that was 6–5 in the Holiday Bowl.

I think the primary issue here is money. Alliance teams and smaller conferences are both fighting for a piece of the reward that comes with participation in the Alliance. Smaller conferences like the WAC want what they get in the NCAA basketball tournament, a piece of the pie, even if that is disproportionate to their contribution. The power conferences want to keep as much of that money as possible to themselves. That is why they created the Alliance because the playoff would cause them to give up that money to smaller schools.

Smaller conferences say that such revenue would let them build their programs so that they would be able to compete with the power leagues. I don't know if that is true. $8.5 million builds some nice facilities, but I don't think it is going to turn Rice into Tennessee on an annual basis.

The only true answer is a playoff, and I know we have heard all of the reasons why it will or won't work. I think if we had 4 or 8 or 16 teams and you utilized the bowls, you could probably come up with a true national champion. Again, something else that hasn't been addressed here is you might be able to breathe some like into the smaller bowls that are struggling in terms of attendance and television ratings.

If an early bowl had—instead of having two 6–5 teams, if it was a first-round game in the NCAA tournament, I think it would be more attractive to people and I think this is a possible answer. Until we get this, I think that in a flawed system like college football, I think a flawed Alliance is the best we can do.

Thank you.

Senator DEWINE. Mr Layden, thank you very much.

[The prepared statement of Mr. Layden follows:]

PREPARED STATEMENT OF TIM LAYDEN

Any examination of the efficacy and fairness of the Bowl Alliance must begin with the understanding that the alliance is only the best available solution to an irresolvable dilemma. The alliance is clearly flawed, but so too is the institution of college football. It will remain so until a championship playoff is created, and possibly after that.

The fundamental imperfections were exposed most glaringly last December when none of the three alliance bowls chose to invite Brigham Young, which finished the regular season with a 13–1 record and won the Western Athletic Conference. The Sugar Bowl could have chosen Brigham Young to play undefeated, No. 1-ranked Florida State in the so-called national championship game, but instead elected to make a rematch with Florida. With two at-large positions left, the Orange Bowl took Nebraska, the runner-up in the Big 12 conference, and the Fiesta Bowl took Penn State from the Big Ten. Thus Brigham Young was left to play in the Cotton Bowl, for far less prestige and far less money.

As a journalist, I found myself conflicted by this scenario. In some romanticized vision of what college football could be, Brigham Young would have played Florida State in the Sugar Bowl, or at the very least would have been given a berth in one of the remaining alliance bowls.

They didn't, because bowls are businesses, not benefactors. Bowls exist to enrich themselves and the cities in which they live, not to serve the NCAA and its members, and not primarily to meet someone's ideal of what college football's postseason should be. Bowls' invitations are based on the economic realities of how many fans might follow a team and how much money those fans might spend. It was BYU coach Lavell Edwards himself who once said, "We used to go to the Holiday Bowl, and our fans would bring a $50 bill and the Ten Commandments and break neither."

Beyond financial issues, a case could easily be made that Brigham Young didn't belong in the alliance, from a competitive standpoint. It's true that BYU went 13–1, but the Cougars lost their only game against a ranked nonconference opponent, Washington. David vs. Goliath is an endearing concept, but there is little evidence that BYU would have been competitive in a game against Florida State. Do I believe that Brigham Young was a better team than Penn State or Nebraska, neither of which was a conference champion and both of which had poorer records? No, I don't. Both played stronger schedules and defeated better teams. Certainly it's illogical to argue that BYU was clearly better.

Here is what the bowl alliance has done, since its formation.

(1) It has eliminated the unseemly, midseason dealmaking that had long characterized bowl conduct.

(2) It has created the best possible environment, short of a playoff, in which a national championship game can be created. This opportunity will be strengthened in the 1998 season, when the Rose Bowl joins the alliance.

There is little doubt that the alliance, with its emphasis on a single championship game, has devalued every other bowl game. Attendance and television ratings have suffered accordingly. But to blame these declines on the alliance is naive. It is axiomatic, but also true, that entertainment options have exploded. It takes a meaningful bowl game to attract audiences, both to the stadium and to television sets. Nonchampionship bowl games are ceremonial—they always have been. And they serve a useful purpose for the teams and fans involved. But even without an alliance, bowls and television networks would attempt to match No. 1 vs. No. 2 and every other bowl game would be accordingly diminished.

A return to the former bowl system would solve nothing. It would make attractive matchups more uncommon and appearances by the likes of Brigham Young in major bowls would still be extremely rare.

As to granting the Western Athletic Conference and other smaller conferences a guaranteed spot in the alliance, it is simply unrealistic. The conferences that annually produce championship-caliber teams are already represented. Teams that are not from the Southeastern Conference, the Pac-10, Big Ten, Big 12, Big East or Notre Dame have won one national championship in 50 years. Smaller conferences point to that single title, BYU's in 1984. That championship is a source of great pride for Brigham Young, but is largely regarded in the college football community as a fluke. BYU ascended to No. 1 because everybody else lost, and secured the title with a narrow, 24–17 victory over Michigan, which finished the year with a 6–6 record.

The primary issue here is money. Alliance teams and smaller conferences are both fighting for the $8.5 million rewards that come with participation in an alliance bowl. Smaller conferences like the WAC want what they get in the NCAA Basketball Tournament: A piece of the pie, often a piece that is disproportionate to their contribution. The power conferences, meanwhile, want to keep as much of the money as possible to themselves. This is why the alliance was created in the first place.

Smaller conferences argue that revenue from the alliance would enable them to build their programs to a level that would allow them to compete with the power leagues. I disagree. I think that $8.5 million might build some nice facilities for WAC schools, but it won't turn Rice into Tennessee. The popularity that college football enjoys is because of the likes of Notre Dame, Alabama, Penn State and Florida, among others. They deserve their status.

The true answer is a playoff, using four or eight or 16 teams and involving the bowls. There would be a fight over the money in that scenario, as well, and WAC schools like Brigham Young would often find themselves just outside those chosen to participate. But it would give the lesser bowls a reason for existing, like early-round tournament games. Until then, the alliance is the best vehicle in a flawed system.

Senator DEWINE. Our next and final witness on this panel is Richard Circuit. He is representing the Plymouth Holiday Bowl. Mr. Circuit served as president of the Holiday Bowl in 1994 and chairman of the board in 1995. He has been a part of the Holiday Bowl Committee since 1978 and joined the board of directors in 1984.

Thank you for joining us.

STATEMENT OF RICHARD CIRCUIT

Mr. CIRCUIT. Thank you very much for this opportunity to appear. This reminds me of the scripture, "The last shall be first and the first shall be last." So thank you for this opportunity, and thank you for the opportunity to hear for the first time, at least at this hearing, from someone from the non-Alliance bowls. No one has really focused on the impact that the Alliance agreements have on the non-Alliance bowls.

The Plymouth Holiday Bowl is convinced that the current Bowl Alliance and the proposed new superalliance violate the antitrust laws of the United States. If the superalliance is permitted to operate in its present format, it will ultimately destroy the independent competitive bowl system that has existed in the free marketplace for over 70 years.

The Alliance, as we have heard, is essentially the commissioners of six conferences and ABC television. These seven entities, working together, have entered into several anticompetitive agreements which have collectively won at least the following. First, it has granted to one media company, ABC, nearly complete control of the marketplace to televise bowl games. With the superalliance in place in 1998, ABC will control all 4 Alliance games, plus 9 of the remaining 14 bowl games. In other words, ABC will be able to dictate the playing dates and starting times of 13 of 18 existing bowl games.

As a result, it is virtually impossible for the Plymouth Holiday Bowl or any non-Alliance bowl to stage a competition during any of the most desirable days or time slots; that is, New Year's Day or prime-time evenings near New Year's Day. For example, recently the Holiday Bowl sought to stage its game in the afternoon on New Year's Day. However, the Pac–10 commissioner advised us that he would withhold any of the Pac–10 teams from participating in our game if there was any chance whatsoever of overlapping into the telecast of the Alliance-controlled Rose Bowl.

This is a direct example of the anti-overlap rule adopted by the Alliance that prevents, by withholding product from the marketplace, any open competition by non-Alliance bowls for television rights. Similarly, it denies consumers the right to choose the bowl games of their choice at popular times.

Senator DEWINE. Mr. Circuit, let me interrupt you. Are those uncontroverted facts? I mean, does anybody say that does not occur, to your knowledge?

Mr. CIRCUIT. Not to my knowledge. I have personal knowledge as a member of the board of our bowl that this is—I am giving you this by my own personal knowledge.

Senator DEWINE. Thank you. Go ahead.

Mr. CIRCUIT. The impact of the Alliance has been to enhance the Alliance members through their deriving higher television fees, higher sponsor fees, and consequently higher team payouts to the Alliance members. The corresponding effect upon those bowl games excluded from the Alliance has been decreased television revenues, decreased sponsorship fees, and declining revenues to be paid out to the universities participating in their games.

Very simply, the Alliance has, and the superalliance will affect the Holiday Bowl in a very dramatic, negative, and we believe illegal manner, just like one would expect of a cartel or a monopoly. Since the advent of the Alliance, the Holiday Bowl has lost millions of dollars in team payouts, reduced ticket revenues, reduced TV rights, and reduced sponsorship fees. I believe many of the non-Alliance bowls have suffered similar results.

The impact of this, of course, is not upon bowls, as Mr. Layden says, that are businesses. We are, in fact, all nonprofit organizations which, under NCAA rules, return at least 75 percent of all revenues to the NCAA and to the participating schools. In the case of the Holiday Bowl, we typically return over 85 percent of revenues. The remaining is to operate our bowl.

I urge the Senators to see that the laws of the United States are properly enforced, or if the laws are not now existent to address this situation, to pass laws ensuring that there will be free and open competition in the marketplace for bowl games. This is the American way.

Thank you.

Senator DeWine. Thank you very much.

[The position statement of the Plymouth Holiday Bowl follows:]

Position Statement of the Plymouth Holiday Bowl

Mr. Chairman and Members of the Committee. The Plymouth Holiday Bowl congratulates you and your Committee for seeing fit to hold these hearings. The outcome is economically important to several areas of the country and important to the majority of our country's universities. We also are most appreciative of being asked to submit a position statement regarding the College Bowl Alliance.

The Plymouth Holiday Bowl is convinced the current Bowl Alliance and the proposed new Super Alliance are not in the best interests of intercollegiate football. The Alliance concept threatens the very survival of a bowl system that has served intercollegiate football admirably for over seven decades.

Prior to the formation of the Bowl Coalition in 1991 and its successor, the Alliance in 1995, all bowls offered a degree of importance that is being seriously eroded today. The Alliance has created an environment wherein only one game is truly meaningful. Many bowl games already are experiencing alarming declines in attendance, sponsor revenues and television rights fees. News media focuses the Nation's attention on the Alliance championship game such that a shadow of disinterest is cast over other bowl games. Even Alliance games in their non-championship game years are struggling for stadium attendance. The likelihood is that this will worsen.

Until the advent of the Alliance, the 18 NCAA-certified bowl games provided an environment that produced 36 "winners." (Two new bowls games have just been NCAA-certified to create four more winners.) Community volunteer organizations labored diligently to present a festival of activities that offered a rich reward for the players and coaches who had earned a bowl trip and a memorable vacation opportunity for the fans who followed their teams to the bowl sites. All 36 universities parlayed their bowl invitations to enhance future season ticket sales, fund raising and recruiting.

Now, with increasing regularity, bowls are looked upon as "just another game" because the only significant contest is No. 1 vs. No. 2. It is only simple logic that this atmosphere leaves bowl organizers critically deficient in their ability to attract fans, sponsors and television viewers.

A tournament to produce a national college football champion (with or without the bowls included) is no solution to the post-season "problem" either. The bowls would not survive under such a system and, again, it would produce one winner instead of 40.

The solution rests with returning control of the bowl system to the bowls themselves—a return to the free enterprise environment of pre-Alliance/pre-Coalition days.

Currently the bowls are effectively controlled by six participating conferences in the Alliance. When the Coalition and subsequently the Alliance were formed, the rest of the bowls were stampeded by conference commissioners into making their own conference deals for fear of losing access to decent team "inventory." Healthy, open competition for the most desirable pairings on an annual basis was stifled.

While the Plymouth Holiday Bowl would prefer a return to the free enterprise pre-Coalition/Alliance days, we respectfully suggest an alternative to restore some open competition among bowls and still satisfy the media's demand for a national championship game:

Reduce the Alliance to one game, No. 1 vs. No. 2 and rotate the game among several bowls. Conferences would be allowed to contract with other bowls in advance only for their respective champions. All other bowl berths would be filled by annual invitation in open competition.

If this recommendation is implemented, other games will again become important because teams have a choice about where they want to go. The bowls can sell their matchups as one they wanted, not one that was assigned by conference contract. As market conditions change, bowls can select teams that make the best sense for them in any given year.

This scenario would help to re-focus media attention on the entire bowl season. Speculation about which teams were going where was always the greatest publicity asset the system enjoyed. Renewed interest from fans, sponsors and television would follow.

The anti-competitive, cartel aspects of the proposed Super-Alliance appear clear to the Plymouth Holiday Bowl: (1) ABC-TV dominance of the marketplace; (2) the anti-overlap rule prohibiting open competition for television rights and (3) the six participating conferences refusing to bargain (withholding product) with 14 of the 18 bowls.

Instead, the Plymouth Holiday Bowl submits that a single championship game concept would foster competition among all networks for the other games and should lead to greater and more evenly distributed rights fees throughout the bowl system.

Unless the system or something similar to this alternative is instituted, the Plymouth Holiday Bowl fears increasing damage will be visited upon a great American institution, the college bowl system. Alarmingly, total extinction may only be a matter of time.

Senator DEWINE. Mr. Roberts, if your proposal was accepted, Mr. Baker and Mr. Lewis probably wouldn't be too happy, would they? Anybody can jump in. I mean, the reality is that your——

Mr. ROBERTS. It would depend on how the other bowl system would then get set up. If all the current self-appointed power conferences had these tie-ins with all of the bowls so that it would essentially exclude the WAC from those minor bowls, then you would still have that problem.

Senator DEWINE. Well, isn't the bottom line—and anyone can answer this. We will start, though, with you, Mr. Roberts. I mean, the bottom line is the thing that we have been skirting during this whole hearing, and maybe we haven't said it directly. To state the obvious, unfettered by an agreement that a bowl has already entered into, bowls make a decision based on their self-interest and their self-interest is to put the best game they can on the field that attracts the most fans and puts out the best product.

Mr. ROBERTS. The Alliance doesn't do that.

Senator DEWINE. No, but I am saying if you went to a system where bowls being able—with the exception of one and two, the bowls would just bid and make the decision who they wanted based on their self-interest. It seems to me BYU, without getting into the merits, as Mr. Layden did, who is certainly more qualified than I am to talk about that—without getting into the merits of what the best team is, as a practical matter BYU probably wouldn't go anyway.

Mr. ROBERTS. No, I think that is wrong.

Senator DEWINE. You think that is wrong, OK. Tell me why.

Mr. ROBERTS. It may not go to the highest-payout bowl because the bowls that are going to command the highest payouts are going to want the highest television audiences, which is the primary generator of monies through the bowls. You would probably want teams that were from conferences that played in the largest television markets, so BYU probably wouldn't get the highest-payout bowls.

But I think one of the things that sticks in the craw—I mean, that was the system for years before the Alliance came along and we didn't have hearings on this. What sticks in people's craw is that Virginia Tech gets to play in Alliance bowl and Texas gets to play in an Alliance bowl and get $8.5 million apiece, and they have no more right to be there and certainly aren't drawing the big television audiences because they are not premier teams.

It is these guaranteed slots and guaranteed $8.5 million payouts to schools that are not No. 1 and No. 2. Every year, these Alliance bowls have the one and two game, which is great, but then you have a couple of dog games. I mean, the first year of the Bowl Alliance, I remember the Sugar Bowl just lost money hand over fist because we had, I believe, West Virginia and Texas, both of whom were very low-ranked, but they just happened to win their conferences. It is this guaranteed slot for six conferences and then the other conferences get nothing.

Senator DEWINE. But, of course, you could have had that under the old system, too. Let's say the Big 10 had a bad year, or let's say the Pac–10 had a bad year, you know, and no one was ranked——

Mr. ROBERTS. That is right, but they wouldn't have paid $8.5 million for it.

Senator DEWINE. Does anyone want to comment on that?

Mr. DELANY. So what makes it improper is the difference, $8 million, not $4 million?

Mr. ROBERTS. Yes, monopoly pricing is what makes the difference. That is right.

Mr. DELANY. The Rose Bowl's participation in this monopolistic pricing is going to increase our payout from $9 million to $11 million. So it seems to me we have got a new product, a better product, and an assured one and two. So the public has been demanding it. The media has been writing about it. We have provided it, and the only thing that we have gained, I think, is an opportunity to play in the championship in exchange for opening up the Rose Bowl. I don't see the problem with that. Further, the Big 10 was providing its third-place team to the WAC to play against their champion and it didn't work financially.

Senator DEWINE. Well, Mr. Delany, let me jump over here a minute. What about Mr. Layden's proposal about how to do this? What would be wrong with setting up a system as he described which would help the other bowls, some of the, "lesser bowls" who would get an early playoff? I mean, the Big 10 is against a playoff system?

Mr. DELANY. That is correct.

Senator DEWINE. That is the bottom line?

Mr. DELANY. That is correct.

Senator DEWINE. Why is that?

Mr. DELANY. Well, I think it is part tradition. I think it is the preference to participate in the Rose Bowl. I think it is a unique experience. It is something that is the dream of a lot of young people in the Midwest, so I think that there is a historic and a traditional rationale to it.

I think that there is also a sense that the bowl system would be threatened by an efficient playoff system. The playoff might be the most efficient way to raise the most amount of money, but I think there is a sense that we have had quality football teams and the bowl system provides more post-season opportunities than a playoff system would.

Senator DEWINE. I certainly understand the attachment to the Rose Bowl. I certainly understand that, but if you integrated, as Mr. Layden, I believe, said, and correct me if I am wrong, the playoff system with the bowl system in preserving the major bowls, I mean why couldn't you be consistent and accomplish those two things?

Mr. DELANY. I could just say it took 2 years to discuss with the various constituents on Big 10 campuses this modest adjustment in a 50-year tradition.

Senator DeWine. I understand.

Mr. Delany. Most of the theoretical playoffs that use bowl sites are a much greater modification than what we have even tinkered with or conceived here. So I think if there were to be a playoff, I can tell you that I think at least 10 football coaches, 10 athletic directors, and 11 university presidents would sit it out. They simply wouldn't participate. So there is a practical side to this whole——

Senator DeWine. Say that again. Say that again. I am sorry.

Mr. Delany. If the majority of members in I–A decided—in other words, let's say the WAC, the Mid-American, and Conference USA decided by a vote of 55 to 45 that they wanted to force the Big 10, the Pac–10, and the SEC into a playoff, we would simply say, thanks, but no thanks; we will continue to play in the Rose Bowl, and then you can go market whatever product you have created and see what interest there is. The fact of it is there would be little to no interest in an agreement with those institutions because they don't carry the interest of the American public.

Mr. Circuit. You know, I could partly respond, too, in addition to what Mr. Delany said, to the proposal by Mr. Layden, and that is that the playoff context—you have a school come in and they play a game and they go, and the bowls have historically provides sometimes up to 10 days or 2 weeks of holidaying, if you will, for the participating universities that come.

Mind you, we are not a business. I am here as a volunteer and there are not any volunteers that I know at my bowl that are interested in stage-managing an NCAA game. Look at the early rounds of the basketball playoffs. They play in empty arenas for the most part, this hallowed, great 64-team event.

Senator DeWine. Well, that depends.

Mr. Circuit. Well, a lot of them do. Watch TV.

Senator DeWine. Mr. Baker.

Mr. Baker. Yes. Senator, I think with respect to Mr. Roberts' proposal, the University of Wyoming, for instance, would be happy if, in fact, we could take that sort of an approach, but get rid of all of these other contractual arrangements.

For instance, I think that Wyoming feels that had there not been all of these complicated and overlapping contracts with these Alliance conferences, our team would have been much more attractive than some of the 6–5 non-ranked match-ups that went together, or the two teams, for instance, who had losing conference records and went to bowls. Frankly, the entire Division I–A—Senator, there is only one school that was an Alliance member that did not have the absolute minimum NCAA qualification to go to a bowl that had to stay home.

They were able to place and get paydays for all of the rest of their members, and that is why we would be more than happy even with an arrangement like this. But, essentially, we feel that it is a matter of legitimacy and that the NCAA, with all due respect to Mr. Delany, not the conference commissioners, should be calling the shots on college football.

Mr. Roberts. I might say, Mr. Chairman, I think that there is a serious antitrust question under exclusive dealing doctrine as to whether or not all of these contractual arrangements that essentially tie up every bowl to some predetermined slot from a conference—those might be violations of the exclusive dealing doctrine just as much as the Alliance could be a rule of reason issue.

Mr. **DELANY**. Mr. Chairman, if that is the case, then it must mean that the Rose Bowl agreement has been illegal for 50 years because the relationship——

Mr. **ROBERTS**. No.

Mr. **DELANY**. Excuse me. The relationship between the Big 10, the Pac–10, and the Rose Bowl is exactly the relationship that exists between the Citrus Bowl, the Big 10, and the SEC.

Senator **DEWINE**. Mr. Roberts, would you like to tackle that assertion?

Mr. **ROBERTS**. Yes. I mean, as long as you don't have virtually all of the marketplace tied up, it is all right to have exclusive dealing contracts. But it is when the entire market gets occupied by these deals that then the system or the scheme becomes arguably illegal.

Senator **DEWINE**. What you are saying is if there is an exclusive contract between one party and another party, that in and of itself is not violative of antitrust. I mean, the Big 10 situation we all know. We have had two conferences that have had a contract with the Rose Bowl, and what you are saying is that that is, on its face, not an antitrust problem, correct?

Mr. **ROBERTS**. That is correct, but if every bowl has a contract like that, then the entire system of those contracts can become violative because there is no room for any—it creates a barrier to entry for any new entry into the industry, basically.

Senator **DEWINE**. I was going to ask you, and I will take the opportunity now, if you want to further expound on what you said in your initial testimony about the antitrust issue. Do you think you have given your summary of why you think there is an antitrust problem here? I mean, basically what you said is you thought it would get to a jury and you didn't know how it would go.

Mr. **ROBERTS**. There is clearly a pro-competitive benefit from the Alliance, which is it creates a national championship game that did not exist before. So we have created a new product that is clearly pro-competitive. On the other hand, there are several anti-competitive effects, not the least of which is squeezing over a dozen bowls and 50 Division I–A schools into a much lesser and permanent second-tier status, and probably drive some of them out of the business altogether. You have got the monopoly pricing problem for the bowls that aren't hosting the national championship game, as well as the national championship game.

I mean, these are complex issues, and I think that they are sufficiently complex and they are sufficiently balanced on both sides that it would not be appropriate for a judge to grant summary judgment one way or the other, which means it goes to a jury and that becomes a bit of a crap shoot. But I think there are sufficient equities and there are sufficient arguments, particularly in the less restrictive alternative approach, that would make it more likely than not that a jury would probably find it illegal. But, you know, you are playing Las Vegas roulette when you go to a jury.

Senator **DEWINE**. I understand.

Mr. **LAYDEN**. Mr. Chairman.

Senator **DEWINE**. Mr. Layden.

Mr. LAYDEN. If one of the principal purposes that we came here today is to try and ensure that people like Chad Lewis and Ron Cooper, who was here on the previous panel, are given their opportunity, it seems that there should be more credence given to the idea that the Alliance people have proposed that a conference like the WAC or like the Mid-American be given an automatic slot with that No. 6 position.

The historical influence of that that WAC teams traditionally don't finish as high as six—all that pre-dates a time when the Big 12 Conference and the Southeastern Conference had championship games, most of which knocked the loser out of that elite position of the top four, five, or six teams. The WAC also has a championship game, but often if there is a strong enough team in the WAC in a given year to be 13–1, they are usually going to be in the top six from now on.

It seems like if that is their concern, and not just moving Texas and the champion of the Big 12 out—I mean, I am unclear on exactly what the WAC is seeking here. If they are seeking a chance for a team like Brigham Young, they can have it. That No. 6 spot will usually get them in an Alliance game. If their goal is something larger than that, then these antitrust issues are probably more important. But that No. 6 slot, I think, from here on will usually get them a position in an Alliance game.

Mr. ROBERTS. They want the same chance that the Big East has.

Mr. LAYDEN. Well, if they get in the top six, they will have it.

Mr. ROBERTS. Yes, but the Big East, if their champion is 20th, they will have it.

Mr. LAYDEN. True. The Big East is a stronger conference.

Mr. ROBERTS. Not by much. You can debate that one.

Mr. DELANY. I am not here to defend the Big East, but they have won four national championships in the last 10 years and have played for 6. I think the marketplace was speaking when it said we would like the Big 10 and Pac–10 and, in addition, the ACC, the Big East, the SEC, and Big 12 are the ones we need to have. They won 49 of the last 50 championships. We need to have them. The other people can play in.

Senator DEWINE. Senator Enzi.

Senator ENZI. Thank you, Mr. Chairman. I will just make a few comments. Again, I would like to thank Mr. Baker for coming. Since I go home to Wyoming every weekend, I know what a tremendous trip it is out here. You will find it much more enjoyable on the way back.

Mr. Roberts, I want to thank you for the tremendous job you did of compiling information that specifically deals with the antitrust issue. It is a tremendous textbook for us and will be very helpful.

Mr. Circuit, I thank you for coming because you have provided a little different insight and one that we need to pursue a little bit more, and that is what the effect is on the bowls that have been left out of the Alliance, as well as the players that have been left out of it.

Mr. Delany, on your comments, I understand there is a certain arrogance on the part of the Rose Bowl. You put on a tremendous parade, but I hope you heard the comments and the previous discussion that we had about how the NIT used to be the championship for basketball and now it is the NCAA.

I think that your suggestion that maybe the other conferences ought to go and form a playoff and see what the effect of that is might have that same effect on football, where the Alliance would no longer be the teams that would be viewed that way. You know, it might be a period of years, but it is something to worry about even if you are the Rose Bowl.

Thank you, Mr. Chairman.

Senator **DEWINE**. Thank you.

Mr. Layden, I was intrigued by your opening comments. In your prepared testimony, you stated that, "The Alliance is clearly flawed, but so is the institution of college football. It will remain so until a championship playoff is created, and possibly after that." I believe that you basically ad libbed before that something to the effect that one thing that has been missing from the testimony so far is that college football is different than college basketball in many, many ways. I am intrigued by what you mean by that and I wonder if you could just maybe expound on that a little bit.

Mr. **LAYDEN**. With regard to college basketball?

Senator **DEWINE**. Well, no, with regard to college football. Obviously, the hearing today is about football and the Alliance, but I am interested in your general comment about what appears to be—and I don't want to put words in your mouth, but some inherent problem with college football. I would just like for you to expand on that, if you could.

Mr. **LAYDEN**. Well, there is nothing wrong with the product on the field, but there is a problem in the concept of post-season college football that can't be cleanly resolved in that until there is a playoff, you are going to have some type of system. Even if you have a playoff, there is a proposal, OK, you are going to have 16 teams. Well, how do we determine those 16 teams? Do we use a computer? The New York Times computer is as likely to select Wake Forest as Nebraska as the national champion just because of the flaws in computer programs. It has been unreliable, so you use the polls.

Well, as I said earlier, I have talked to college football coaches whose sports information directors vote their poll every week, or who make sure that they vote their friends. It is not possible to have a clean system. I think the Alliance has its own underlying reasons for existing, the principal one of which is to keep the money in the hands of the Division I-A institutions rather than share it with 300 institutions, as they do in the basketball tournament. That is only one of among many problems.

But at the same time, they have addressed an issue, the post-season issue, and give it as complete a solution as they can. If that doesn't let the WAC in every year, that is a weakness of it, but it is as good as we have been able to see. My point was that the system does not have a clean resolution the way it exists.

Senator **DEWINE**. You had the opportunity to listen to the NCAA's testimony. Is this a problem or a situation that needs for the NCAA to become more involved or less involved? I mean, is that a solution to this? I mean, when you look at the fact that the NCAA has established the playoff system or championship system in all the other sports and has done it in the other divisions, the fact that they are absent—and I say absent with qualification because they do do some certification of the bowls, and they explained how they did that, but basically absent from the selection process or from setting up that system. Is that in and of itself a problem, do you think?

Mr. LAYDEN. There is a sense, as Mr. Dempsey said earlier today, that with the restructuring of the NCAA in which Division I–A now is more in control of its position, the college presidents of those institutions will now more seriously consider a playoff, largely because there is too much money involved not to, far more money, their own survey showed, than the Alliance can generate.

In the past, the extensive survey that was referred to in 1994 actually only got to two formal meetings of that committee before the conference commissioners essentially beat them to the punch by forming the Alliance. But now they have the mechanism in place to create a playoff among Division I–A schools, and clearly they are in a position to do it. It is a matter of whether they want to or not.

Senator DEWINE. Mr. Lewis, I would be curious to know your thoughts about the whole playoff issue. You have had the chance to listen to a lot of other people talk about it today.

Mr. LEWIS. I don't know. We played 15 games this year. That is the most any team in the history of the NCAA has played. There were a couple Academic All-Americans on our team, and so they were able to do well in school. But at the same time, you know, a playoff could hopefully figure out who could be the best, and in my testimony I stated that as an athlete the only thing you want is to be able to make a shot at the title. So at the beginning of the year, I think there are about 40 percent of the teams in Division I that know that they have no chance to be champions, and that is crazy. As a player, I would want to know that every weight I lifted, every sprint I ran, everything I did would hopefully give me the possibility to be a champion.

This is a complex issue. A lot of questions need to be answered and I don't know what the right thing to do is, but I am glad that I am here and I can share BYU's perspective of this whole thing.

Senator DEWINE. Let me conclude again by thanking all of you, and I would like to make a reference to an article by Mr. Layden dated December 16, and I will start with you to maybe expand on it a little bit. I think we have touched on a good part of this already, but I would like the other panelists to have the opportunity to comment on it.

Again, this article, as I said, was—I think the date is significant, December 16, 1996, Sports Illustrated. About a third of the way, I guess, into the article, I will quote:

> It was the shunning of Brigham Young, however, despite the fact that the Cougars have a higher ranking and a better record then either of the at-large teams chosen, Nebraska and Penn State, by the Alliance, that served to trash two widely accepted myths. Myth No. 1: the purpose of the Alliance is to determine the true national champion. Not even close. The purpose of the Alliance is to avoid the creation of NCAA-run national playoffs. Such playoffs would put the NCAA in charge of the beaucoup dollars the event would generate. The Alliance exists to keep the power and money in the hands of the Alliance bowls and the four conferences that receive guaranteed berths in those bowls.

> In the spring of 1994, the NCAA tried to study the possibility of starting a playoff system but, overwhelmed by political and economic issues, gave up right after breakfast on the first day. Conference commissioners and bowl representatives meanwhile jumped to fill the void and protect themselves, creating the Alliance. Any national championship games that result are a bonus.
>
> Myth No. 2: the Alliance bowls exist to give the fans the best possible games. Bowls are business with major corporate sponsorship and huge television deals. Their purpose is to fill stadiums, generate TV ratings, and created precious economic impact on their communities in the days leading up to the games. BYU fails not only on the strength of schedule issue, but also on the economic impact side. Bowls, particularly the Sugar Bowl, thrive on bar business. One of the tenets of the Mormon faith is abstinence from alcohol.
>
> You do the math. In the French Quarter, they don't call the most famous thoroughfare Milk Street. 'We used to go to the Holiday Bowl and our fans would bring a $50 bill and the Ten Commandments, and break neither,' says BYU coach Edwards. Nebraska fans, on the other hand, travel like Dead Heads and spend like tourists. Choosing bowl teams based in significant part on the rabidity and spending habits of their fans isn't fair to the audience watching the bowls at home. For all its flaws, BYU would even be a more intriguing opponent for Florida State than a team the Seminoles have already beaten. Unfortunately, money rules all match-ups.

Mr. Layden, you have commented on a good part of that, and I guess your summary has pretty much been that the new Alliance system is flawed, but the old system was, I guess, worse. Is that a fair summary?

Mr. LAYDEN. Yes. I mean, I am not going to propose to speak here better than I can write there. I had more time then. But, yes, I mean that is basically it. I would rather have seen Chad and his teammates play Florida State last year. I think they probably would have lost, but I would have probably rather have seen that game than Florida again, but I understand why it happened. The way this system is set up, most years, in most cases, the Alliance will serve the public well within those parameters.

Senator DEWINE. Anyone else on the panel? Mr. Roberts?

Mr. ROBERTS. One of the problems here—and I don't blame the six Alliance conferences for trying to maximize revenues. That is perfectly appropriate for them to do, but the problem is we are dealing with an industry that has 113 schools in it and intercollegiate athletics is supposed to be all about participation opportunities, giving young kids going to school to get an education a chance to participate.

The problem is, is when you create a system that gives the six conferences so much more revenue and so much more prestige and recruiting advantage, you essentially squeeze the other 50 out and you end up winnowing the industry down. I don't object to schools trying to maximize revenue, but when they do it in a way that creates such a huge gap between the haves and the have-nots, you essentially end up cutting the industry in half, and that is not good for the public in the long term.

It may be good in the short term because they get a championship game, but in the long term they lose 50 schools that have a lot of fans and have a lot of kids playing at them. So maybe in the short term, you know, we have got a good deal going, but in the long run we are going to end up with a much, much smaller Division I–A that is not good for anybody except those 63 schools.

Senator DEWINE. Mr. Circuit.

Mr. CIRCUIT. I would just comment in one sense on that. The old system may have not been to Mr. Layden's and other media types' liking, but it was clearly legal. It was a clearly free marketplace, and I don't believe this current system is.

Second, just very quickly, as a college football fan I have been hearing all this stuff here today about the superiority of six conferences. The reality is that since 1960, there have been 37 national championships awarded. Twenty-five have been won by six teams. So when we talk about this, let's get it straight. There are six or seven teams that have really dominated, and it isn't six or seven conferences; it is six or seven teams. So let's keep that in mind as you at least try to look at the egalitarian side of this, if that is the direction this is going to go.

Senator DEWINE. Thank you very much. Anyone else?

Mr. LAYDEN. It just should also be noted that none of those six teams come from the WAC or the MAC or Conference USA.

Mr. ROBERTS. Of course, the University of Chicago won some championships if we go back far enough.

Mr. DELANY. You have to go back that far to find a Big 10 team that won a championship, but that is in part because we don't go 11–0 because it is the rare team that goes 11–0 playing Notre Dame a few times a year and playing Penn State, Ohio State, Michigan, Michigan State, Iowa, Northwestern, and Wisconsin. So I hope I didn't leave anybody out.

Senator DEWINE. You are doing fine.

Anyone else?

Mr. BAKER. Senator, only to say that I hope you will join us in Columbus for opening day. Wyoming will be playing Ohio State.

Senator DEWINE. I am aware of that, very much so, very much so.

Mr. BAKER. You will get a chance to see some of our young men up close.

Senator DEWINE. Well, my son, who is seated behind you, has also expressed an interest in being there, so we may work that out if Congress cooperates.

Let me again thank all of you and thank all of our panelists. I think the hearing has been very good in the sense of getting these issues out. The historic function of this subcommittee, with some exceptions, has not been to write a great deal of legislation. The historic function of this subcommittee has been to look at antitrust issues, to attempt to provide a forum to discuss them, and to look at the aspects of not only antitrust, but anti-competition and how to foster competition.

So the hearing, I think, was a very helpful hearing, in that we brought out some issues. We clearly had some very sharp disagreements about those issues, and I am sure that I speak for all the panelists that although we have a lot of discussion about money and we have a lot of discussion about the law, the people that we need to be concerned about ultimately are the student-athletes, not only the student-athletes who play football, but who play every other intercollegiate sport in all the universities that have been represented here today and that are represented across the country. That ultimately, I am sure, is everyone's concern.

Again, I thank you all very much and this hearing is adjourned.

[Whereupon, at 5:37 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

RESPONSE OF DAVID L. BAKER TO A QUESTION FROM SENATOR STROM THURMOND

Question 1. Mr. Baker, you indicate in your prepared testimony that too much emphasis is placed on money in determining the teams that participate in the College Bowl Alliance. How do you feel the Bowl Alliance can de-emphasize money without schools leaving the Alliance and returning to traditional exclusive arrangements with individual bowls?

Answer 1. Senator, to the extent that I gave an impression that "too much emphasis is placed on money in determining the teams that participate in the College Bowl Alliance," I have caused myself to be misunderstood. There is no need to de-emphasize money. There would be some merit however, to placing some limits on the greed that characterizes the Conference Commissioners who control the College Bowl Alliance.

It is not merely the avarice but the outrageous acquisitiveness and selfishness of the Alliance Commissioners that is so unseemly. This is not limited to money. The Alliance Commissioners seek to:

- Monopolize the bowl appearances in the so-called "lesser bowls".[1]
- Limit the time slots in which bowl games may be played.[2]
- Denigrate the accomplishments of non-Alliance teams.
- Control the regular exposure of non-Alliance teams on national television.[3]

These actions are directed toward eliminating all non-Alliance competition. The amount of money involved is not as relevant as the Alliance goal of acquiring all of the remuneration available to distribute outside the oversight of the NCAA.

Last week our institution—along with every other NCAA Division I school—received a distribution of NCAA basketball tournament income to be used for academic enhancement. No one has complained that the very, very large sums being paid for NCAA Basketball broadcast rights constitutes too much emphasis on money. The collective wisdom of the NCAA member schools went into determining how those revenues are to be distributed among the members. Thus, there is a legitimacy in the NCAA stewardship of basketball revenues that is absent in the Alliance manipulation of post-season football money.

This issue of legitimacy was never addressed by the paid staff member of the NCAA who testified before your Subcommittee. The governance of the NCAA is placed in the hands of America's College and University presidents, who oversee championships in every NCAA sport except Division IA football. Division IA football is now divided between the "haves" (big time football) and the "have nots" (non-Alliance members). A recent change in the governance of the NCAA will formalize this caste system. Still, it would be preferable to bring Division IA post season play under the ambit of the NCAA and sunshine of the national academic community than to continue present banditry being perpetuated by the Bowl Alliance.

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[1] Alliance domination of the bowls other than the Orange, Sugar, Fiesta and Rose Bowls was demonstrated in an attachment to my testimony, another copy of which is enclosed.

[2] At the hearing Mr. Circuit offered testimony—uncontradicted by Mr. Delaney who shared the panel with him—that when the Holiday Bowl sought to change its play date and time to 4:00 p.m. on New Years Day, Mr. Delaney stated that the Big Ten Conference would refuse to make its teams available for a contest that might compete with the Rose Bowl.

[3] See FN 1; regular season conference TV packages are primarily with ABC/ESPN with an interest on marketing their Alliance regular season match-ups.

1996 NCAA Division IA Bowl Game Review

Conferences	ACC	Big East	Big 12	SEC	Pacific-10	Big 10	Total
Members	9	8	12	12	10	11	62
TV Package	Raycom ESPN	Creative Sports ESPN/ABC	Liberty Fox ESPN/ABC	Jefferson Pilot CBS/ESPN	Liberty Fox ESPN/ABC	Creative Sports ESPN/ABC	
1996 Bowl Contracts/Appearances.	(4) Sugar Gator Peach Carquest	(4) Orange Gator Carquest Liberty	(5) Fiesta Orange Cotton Holiday Alamo	(5) Sugar Citrus Outback Peach Independence	(4) Rose Holiday (or Cotton) Aloha Sun	(7) Rose Fiesta Citrus Outback Alamo Sun Copper	
1996 Bowl Opponents	Florida West Virginia LSU Miami	Nebraska North Carolina Virginia Houston	Penn State Virginia Tech Brigham Young Washington Iowa	Florida State Northwestern Michigan Clemson Army	Ohio State Colorado Navy Michigan State	Arizona State Texas Tennessee Alabama Texas Tech Stanford Utah	
Bowl Income	$12,286,000	$11,536,000	$21,372,000	$15,336,000	$11,400,000	$23,986,000	$95,916,000

Conferences	Big West	Conference USA	Mid-American	WAC	Total
Members	6	6	10	16	38
TV Package	Independents	Sports Channel/Fox	Sports Channel/Fox	ESPN/ABC	
1996 Bowl Contracts/Appearances	Las Vegas	Liberty	Las Vegas	Cotton (or Holiday) Copper	
1996 Bowl Opponents	Ball State	Syracuse	Nevada	Kansas State Wisconsin	
Bowl Income	$150,000	$800,000	$150,000	$2,750,000	$3,850,000

RESPONSES OF KARL BENSON TO QUESTIONS FROM SENATOR DEWINE

Answer 4. Regarding question No. 4, the fairest and most equitable way for the WAC to compete in the Bowl Alliance is to have the same privileges and participation opportunities as the six original Alliance members—automatic access for its champion regardless of ranking. Although the WAC has accepted the Alliance offer of a No. 6 ranking, it certainly does not believe it is necessarily "fair and equitable."

Answer 5. Regarding question No. 5, the WAC received legal opinion last December that concluded the Alliance operated in violation of antitrust laws and subsequently gave serious consideration to filing a lawsuit. However, with the membership diversity that exists in the WAC (state universities, private universities, universities with strong church affiliation and the United States Air Force Academy) the 16 WAC presidents could not come to a consensus to litigate.

RESPONSES OF RICHARD K. CIRCUIT TO QUESTIONS FROM SENATOR MITCH MCCONNELL

HOLIDAY BOWL'S LESS RESTRICTIVE ALTERNATIVE

Question 1. All along, I have maintained that there must be a less restrictive means of creating a national championship game. Is it fair to say that you agree with the assessment that it is extremely overbroad to lock-up four bowls and eight teams in order to get one game?

Answer 1. Yes, I completely agree with you. The proposed Alliance is overly broad, both in the fact that it is unnecessary to lock up four bowls, eight teams and now (since the agreement with WAC and Conference USA) eight conferences to get one game—But it is also overly broad, and I believe illegal, for the eight conferences to "boycott" any bowl that competes directly with any of the Alliance games.

Question 2. Spell out for the Committee how your proposal of a single national championship game would work. Would it essentially be that #1 and #2 would automatically go to the "championship bowl game" and the other teams and bowls could then freely contract with whomever they choose?

Answer 2. Under the Holiday Bowl proposal, a national championship game could be rotated annually among the four Alliance bowls. Under the Holiday Bowl proposal, conference champions would be contracted to a specific bowl. If they were not in the championship game, all other games and bowls would then be free to compete and contract with whomever they chose. Under this scenario, the Holiday Bowl would have no objection to an anti-overlap agreement that protects the single national championship game. The Holiday Bowl believes that protecting only one game and one time slot is not an undue restriction on competition.

ANTI-OVERLAP AGREEMENT—NO GAMES OPPOSITE ALLIANCE BOWLS

Question 3a. A few years ago, the Holiday Bowl argued that there was an anti-overlap agreement among the Alliance conferences. You have also made such a statement here today. Am I right in concluding that under the terms of such an agreement, no Alliance bowls or teams would be able to compete in television time slots opposite other Alliance bowls?

Answer 3a. Yes. If a bowl attempted to schedule its game opposite an Alliance bowl, it is our understanding that the Conference Commissioners from the Alliance Conference would prohibit any of their Conference members from accepting an invitation to play in this bowl.

Question 3b. Did some form of an anti-overlap agreement exist in the original Request for Proposal?

Answer 3b. As I recall, the Request for Proposal stated that the selected bowls would be guaranteed that no member Conference teams would be permitted to play in a bowl in a conflicting time period.

Question 3c. Prior to the existence of the Bowl Coalition and Bowl Alliance—say 1988 or 1989 or 1990, were any games played opposite either the Sugar, Orange, or Fiesta bowls?

Answer 3c. Yes, in fact the Orange Bowl and Sugar Bowl played opposite each other. Also, the Fiesta Bowl overlapped part of the Rose Bowl.

Question 3d. Since the Bowl Coalition and Bowl Alliance came into effect in 1991, have any bowl games been broadcasted opposite the Sugar, Orange, or Fiesta bowls?

Answer 3d. No.

ANTI-OVERLAP AGREEMENT ENSURES THAT ALLIANCE IS THE "ONLY GAME IN TOWN"

Question 4. Would you not agree with me that television ratings regarding Alliance games could overstate consumer satisfaction if consumers have no other choice of a game to watch in that prime New Year's television slot? In other words, maybe the reason that consumers kept watching No. 7 Penn State trounce No. 20 Texas is because it was literally the "only game in town"?

Answer 4. I totally agree with you. I believe research would show that the combined television ratings of two bowl games played opposite each other would exceed the rating of a single bowl game played in an exclusive time slot.

RESPONSE OF RICHARD K. CIRCUIT TO A QUESTION FROM SENATOR STROM THURMOND

Question 5. Mr. Circuit, it is my understanding that when the Bowl Alliance was formed, every bowl except the Rose Bowl was given the opportunity to bid to be a part of the arrangement when it was formed. Why did the Holiday Bowl choose not to bid?

Answer 5. This question implies that if one is given an opportunity to join an illegal activity and declines, he is thereafter precluded from condemning the illegal activity. As a point of fact, the Holiday Bowl determined that it was not appropriate to "bid" for a position in a system that excluded the Western Athletic Conference champion. Setting aside our reservations about the group boycott and the anti-overlap rule, we felt it was fundamentally unfair and immoral to support an "old boy" exclusionary format. In the alternative, the Holiday Bowl proposed that a fourth bowl be added to remove the exclusion of the WAC. In that scenario, the Holiday Bowl would guarantee inclusion of the WAC champion in its game if the WAC champion were not selected by one of the three Alliance bowls. The Holiday Bowl further stipulated that it would agree to pick last (No. 7 and No. 8) each year. The Alliance bowls would have been further advantaged in that the Holiday Bowl proposal created one more Alliance berth for a member team. The Alliance Commissioners refused to even consider this proposal. If the proposal were to have been accepted, it would have completely obviated the complaints raised at the hearing by the senators from Utah and Wyoming. Finally, even though the Alliance has offered a "form" of admittance to the WAC and Conference USA, such admission only further exacerbates (by broadening the group boycott) the harm done to all non-Alliance bowls by the Alliance anti-overlap agreements.

RESPONSES OF JAMES E. DELANY TO QUESTIONS FROM SENATOR MITCH MCCONNELL

Question 1. A lot of statements have been made about the Alliance's opposition to a playoff. These statements, however, are typically made by someone other than the Alliance. For example, it has been said that the Alliance created the Bowl Coalition and the Bowl Alliance to "avoid the creation of a NCAA-run national playoff * * * and to keep the power and money in the hands of the * * * [Alliance] conferences." What is your view of a playoff system?

Answer 1. I agree with Mr. Kramer that the Alliance itself has no position on a playoff system. I can speak only for the member institutions of the Big Ten, who have opposed a playoff largely for the same reasons discussed in Mr. Kramer's response to this question.

Question 2. If you could be convinced that both players and fans preferred a playoff system, and assuming there was some way to do that in conjunction with the bowls—would you be open to a playoff system?

Answer 2. Again, I can only respond for the Big Ten Conference. Over a long period of time, the presidents of the institutions in the Big Ten have been consistently opposed to a multi-game, NFL-style playoff. I do not know if the hypothetical circumstances posed by the question would alter that opposition.

Question 3. In the Alliance's legal brief, you repeatedly state that there is no groundswell of support for a playoff system. How can you make this statement in the face of the testimony we're hearing here today? Moreover, how can you make this argument when a recent Gallop poll shows that 70 percent of college football fans prefer a play-off system over the current bowl system?

Answer 3. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 4. Again, in the Alliance brief, you argue that "The Alliance Agreement Has No Anticompetitive Effects." (p. 40) The Alliance made a similar argument in a memorandum to me in 1993—when the Bowl Coalition did not even have a theoretical opening for at-large teams. I must confess that I find your absolutist argument a bit hard to swallow. Let's spell this out.

Question 4a. Immediately prior to the existence of the Bowl Coalition/Alliance, how many "open," uncommitted slots did the Sugar, Orange, and Fiesta Bowls have?

Question 4b. Under the present Bowl Alliance agreement, read in a light mist favorable to the Alliance, how many slots are theoretically open to non-Alliance teams?

Question 4c. So my understanding is that prior to the Bowl Coalition/Alliance, there were four open slots. Is that right?

Question 4d. And under the current Bowl Alliance agreements, there are two open slots. Is that right?

Question 4e. Isn't is fair then to say that there is less competition as a result of the Bowl Alliance?

Answers 4a–4e. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 5. A few years ago, the Holiday Bowl—which has sent a representative to testify here today—argued that there was an anti-overlap agreement among the Alliance conferences. Under the terms of such an agreement, no Alliance bowls or teams would be able to compete in television time slots opposite other Alliance bowls.

Question 5a. Did some form of an anti-overlap agreement exist in the original Request for Proposal?

Question 5b. Did some form of anti-overlap agreement exist in the actual written Alliance contract?

Question 5c. Prior to the existence of the Bowl Coalition and Bowl Alliance—say 1988 or 1989 or 1990, were any games played opposite either the Sugar, Orange or Fiesta bowls?

Question 5d. Since the Bowl Coalition and Bowl Alliance came into effect in 1991, have any bowl games been broadcast opposite the Sugar, Orange or Fiesta bowls?

Question 5e. Are you aware of other bowl agreements within your own conference that prohibit playing opposite Alliance bowls?

Answer 5a–5e. Mr. Kramer responded fully to the first four subparts to this question, and I am in general agreement with those responses. With respect to the third subpart, like Mr. Kramer, I do not recall the exact times that each of the bowl games was played before the Coalition, but Mr. Kramer's statement that, until the late 1980s, the Rose Bowl was generally not played opposite any other bowl game is correct. Beginning in the late 1980s and into the early 1990s, the Fiesta Bowl generally kicked off at about the same time as the Rose Bowl. In the late 1980s and the early 1990s, the Orange Bowl was generally played opposite the Sugar Bowl.

With respect to subpart five, I do not recall any agreements between the Big Ten and either the Fiesta Bowl or Sugar Bowl that our institutions would not compete in other bowl games played at substantially the same time as those games. I have also been unable to locate any such agreements after reviewing our files. At the request of the Orange Bowl, the members of the Big Ten have agreed that they will not play in another bowl game at substantially the same time as the Orange Bowl provided that Big Ten institutions are eligible to be selected by the Orange Bowl in any particular year.

It has generally been our practice and preference over the years not to have the member institutions of the Big Ten participate in bowl games that are played substantially in the same time period. We do not want our fans to have to choose between two postseason games involving Big Ten teams. Instead, we prefer that they be able to watch both. This is true not only for the Alliance bowls but also for the Citrus, Outback, Sun, and Alamo bowls, all of which host a member of our conference each year. With respect to the Rose Bowl, we do have an agreement that we will not participate in another game that starts within two hours and forty-five minutes of the kickoff of the Rose Bowl. That provision has been in our formal agreement with the Rose Bowl since at least 1990, before the formation of the Alliance, and perhaps several years before that.

Question 6. In your brief, you spend a great deal of time arguing that consumers are happy with the current bowl-set up, and in particular, happy with the Alliance bowl games. You base this conclusion on television ratings. Would you not agree with me that those television ratings could overstate consumer satisfaction if consumers have no other choice of a game to watch in that prime time New Year's television slot? In other words, maybe the reason that consumers kept watching No. 7 Penn State trounce No. 20 Texas is because it was literally the "only game in town"?

Answer 6. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 7. The current Alliance agreement provides that a non-Alliance school, such as BYU, may be eligible if it either (a) has 8 wins, or (b) is ranked higher than the conference champion from one of the Alliance conferences.

Question 7a. Which poll or rating system do the conferences and bowl committees use to determine the ranking of the Alliance and Non-Alliance schools?

Question 7b. If the Sagarin ratings are not used for the purposes of determining whether a non-Alliance school is ranked higher than an Alliance conference champion, then why does the Alliance consistently cite the Sagarin ratings in its brief to justify the decision NOT to pick BYU?

Answers 7a–7b. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 8. If, in fact, the Sagarin ratings are important to the Alliance, then I would think that the Alliance would be interested in the following fact: Factoring in East Carolina's commitment to join the C–USA, the Sagarin ratings place the CUSA ahead of the Big East Conference and the Atlantic Coast Conference. Both the Big East and the ACC have a guaranteed berth in the Alliance bowls. Under the Alliance's own standards, don't these Sagarin ratings suggest that the C–USA is more deserving of a guaranteed berth than either the Big East or the ACC?

Answer 8. I generally agree with Mr. Kramer's response. Let me reiterate that the Big Ten would not participate in the new Alliance arrangement if it had to give up its relationship with the Rose Bowl. As I noted in my written statement, that relationship is of a half-century's standing, is highly valued by the Big Ten, and is part of the fabric of our conference. Our member institutions are willing for our conference champion to appear in another bowl only when that team is ranked number one or two and the Rose Bowl is not scheduled to host the championship game. Continuing our close and valued relationship with the Rose Bowl is vitally important to our conference, and while we are willing to alter that tradition to make a true national championship possible on an annual basis—which we believe is good for college football as a whole—we consider that alteration a substantial price to pay for the creation of a national championship game every year. Thus, our ability to maintain our traditional affiliation with the Rose Bowl is absolutely necessary if we are to participate in the new Alliance arrangement.

Question 9. What role do the Alliance conferences play in the selection process? How many slots are absolutely mandated by the Alliance conferences?

Answer 9. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 10. Describe any conversations you may have been privy to regarding the 1996 selection process. Specifically, describe any of your conversations between the bowls, commissioners, and the networks regarding the decision NOT to select BYU—in spite of their record and ranking.

Answer 10. As is normal for conference commissioners, I spoke with representatives of both the Fiesta and Orange Bowls to promote our institutions and told them that we were interested in playing in their games. I also told them that I recognized that they would make their decisions on which at-large teams to select based on their own criteria, as they had in the past. At no time did I suggest, or am I aware of anyone connected with an Alliance conference or television network suggesting, that those bowls should not select Brigham Young or any other eligible team.

Question 11. What role do the networks have, either formally or informally, in the selection of teams?

Answer 11. Like, Mr. Kramer, I am not aware of the terms of the contractual arrangements between the three Alliance bowls and their telecasting networks. Those contracts are negotiated solely between each bowl and its television network. As Mr. Kramer pointed out, the bowl selection committees may consult informally with their television networks as part of their selection process.

Question 12. How were the Orange, Sugar, and Fiesta bowls selected to be in the Alliance?

Answer 12. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 13. Was their [sic] a bid process? If so, did the Alliance bowls go to the highest bidders?

Answer 13. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 14. I understand from your brief that the new SuperAlliance bowls have not been selected. What is the method of selection for the new bowls? Will all bowls have a chance to bid? Will the SuperAlliance designation go to the highest bidder? The Holiday Bowl is here with us to testify today. If the Holiday Bowl is the highest bidder, will it be one of the SuperAlliance bowls?

Answer 14. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 15. The Alliance justifies its championship structure in large part based on which schools and conferences have a winning tradition or legacy of bowl victories. This type of reasoning seems to me to be-at the heart of the Alliance's antitrust violations. Doesn't it strike you as patently unfair to reward a school in 1997 for its accomplishments in the 1980s? I think it is completely irrelevant what a team like the University of Louisville or a team like the University of Alabama did in previous years. In fact, in the Fiesta Bowl following the 1990 season—before the Alliance came onto the scene—U of L played Alabama on New Year's Day. U of L had never been to a New Year's Day bowl, while Alabama had won more bowl games than any team in the country. U of L won that game 34–7. Don't you think that the Alliance's reliance on past performance perpetuates the current power structure and ensures that the strong get stronger, while the rest get weaker?

Answer 15. Mr. Kramer responded fully to this question. I generally agree with his response.

Question 16. The Alliance spends a lot of time arguing that its horizontal agreements allow college football to compete more effectively with other sporting events, like the NFL. Don't you think that an open system—that allows merit-based competition and allows both Davids and Goliaths to play each other—would be more exciting for fans, and thus, be more competitive with some potential NFL New Year's day game? For example, you certainly don't see the NBA putting a great deal of effort into broadcasting games opposite March Madness.

Answer 16. Mr. Kramer responded fully to this question. I generally agree with his response.

RESPONSES OF JAMES E. DELANY TO QUESTIONS FROM SENATOR STROM THURMOND

Question 3. Mr. Delany, if the NCAA moved to a play-off system for Division I-A teams, what impact do you believe this system would have on fan support and TV ratings for traditional bowl games?

Answer 3. I generally agree with the statements made by Mr. Kramer in response to Question No. 1 posed by Senator McConnell. It is my view that, over the long run, most of the support from television networks, corporate sponsors, and advertisers that now flows into the traditional bowl system would be taken out of the bowl games and put into a playoff if one were created. Whatever mechanism is used to determine the national championship will draw the most media attention and fan interest as well. If that is a playoff, then I believe that it will draw the lion's share of fan support and television ratings as well.

Like Mr. Kramer, I also believe that it would be very difficult, if not impossible, for many of the smaller bowl games to survive if a playoff system is created. Although the smaller bowls are not as well established as some of the older games, they are important to college football and provide the coaches, players, and fans of a number of institutions with superb postseason experiences. The loss of those opportunities would, I believe, hurt college football. I am also concerned that even the older, more established bowl games, if they survive, will be tremendously altered. These bowls provide not only financial support for the participating teams but also support for higher education generally through scholarship programs and the like. They also sponsor a number of community events and support charitable activities. Thus, even if these older bowls could survive after the creation of a playoff, I am concerned that the character of these entities would be greatly changed.

Question 4. Mr. Delany, when the Rose Bowl is added to the Bowl Alliance following the 1998 season, how likely will it be that the Alliance will create an annual matchup between the two top-ranked NCAA Division I–A teams?

Answer 4. Once the Rose Bowl is integrated into the Alliance after the 1998 regular season, the creation of an annual national championship game will be as certain as it can be made. I can only think of one circumstance in which the two top-ranked teams would not meet in a bowl game: One of those two teams would have to be

(1) a member of a non-Alliance conference or an independent other than Notre Dame and (2) choose not to play in the game. To my knowledge, no non-Alliance team has rejected the opportunity to make itself available to play in an Alliance bowl if selected, and I would not expect any eligible team to refuse to play in the game.

RESPONSES OF CEDRIC W. DEMPSEY TO QUESTIONS FROM SENATOR MITCH MCCONNELL

Question 1. Imagine the reaction if "March Madness" were run by the College Bowl Alliance.

I think we all would agree that March Madness is a tremendous success for the NCAA, the colleges, the networks, and the fans. It is clearly one of the most successful and exciting events in all of sports. Moreover, the event exemplifies basic fairness and open competition. In the face of this kind of unqualified success and open competition, how can the NCAA continue to take a hands-off approach to the world of Division I college football?

What do you think would be the national reaction if tomorrow the NCAA decided it was going to get out of the college basketball playoff business and let a few conferences and a few private entities run the basketball postseason. Specifically, the new system would not be a playoff system to all conferences and all schools, but rather would be genuinely open to only six conferences. The remaining schools and conferences would receive no opportunity to compete, or, at best, only a theoretical opportunity to compete.

Even worse, imagine further that the NCAA tournament schools would receive 8 million dollars for participating. And, the justification for choosing the privileged schools would be simply: "Hey, we've been successful over the past several years so we deserved privileged status for this upcoming season."

What do you think would be the reaction by the fans and the excluded schools?

Answer 1. The NCAA executive director does not have the authority to dictate that the Association will sponsor a Division I–A national football championship. The executive director has prepared written reports on the subject for review and consideration by the newly formed NCAA Division I Board of Directors. That group has demonstrated little interest in supporting a national football championship concept.

Fans, media and some institutions have lobbied for a national football championship for many years. Those publics, however, have not been persuasive in their attempts to influence a change of opinion by chief executive officers of institutions of higher learning. The vast majority of Division I–A currently supports the status quo. No individual or committee can overrule the vote of the membership.

Question 2. Why conduct national championships in every sport and on every level of college football—except Division IA?

Answer 2. Bowl games traditionally have provided competitive opportunities for student-athletes and have generated significant revenues for Division I–A institutions over a long period of time. Most Division I–A members have shared in these revenues either directly as a participant or indirectly as a member of a conference that shares postseason revenues with all members. Those institutions are reluctant to support a change in the traditional structure and believe that the current bowl system provides more student-athletes, and therefore more institutions, the opportunity to participate in postseason play. A similar structure has never existed for NCAA championships for other sports.

Question 3. Hands-off approach.

The NCAA has a history of being concerned about the corruption and infiltration of money into college athletics. As an outgrowth of these concerns, the NCAA has promulgated stringent rules and regulations to avoid the corrupting influence of money. I applaud your concerns and your efforts in this regard. Let me again point out that the Bowl Alliance involves six conferences and approximately $70 million. This, I would presume, is the single biggest infiltration of money into college athletics. Is there not some concern over corruption and unfairness here? Does it not strike you as illogical or even hypocritical for the NCAA to take such a hands-off approach to the Big Money Bowl Alliance?

Answer 3. There is no evidence of corruption in the traditional bowl system or the current and proposed alliance. The Division I–A membership is concerned about some of the exclusionary provisions of the alliance. It is my understanding that those individuals responsible for formulating and administering the alliance have responded positively to those concerns. As long as the majority of the Division I–A membership supports the current bowl structure, the NCAA legislative process will not vest any group or individual the power to enact a Division I–A national football championship.

Question 4. Describe the NCAA's recent discussions of playoffs.

In a December 1996 Sports Illustrated article, Tim Layden wrote that "in the spring of 1994 the NCAA tried to study the possibility of starting a playoff system but, overwhelmed by political and economic issues, gave up right after breakfast on the first day."

Describe those political issues that forced the NCAA to scrap any thoughts of a playoff system in 1994.

Has a vote even been taken on the issue of football playoffs in the NCAA?

Who will decide whether playoffs should become a reality? Presidents? Athletic Directors? What is the make-up of that body in terms of Alliance versus Non-Alliance schools? In other words, is the Alliance a majority of the deciding body?

Answer 4. The NCAA's most recent discussions that focused on a Division I–A national football championship included a comprehensive study by the NCAA Special Committee to Study a Division I–A Football Championship, which prepared an extensive report for the NCAA Presidents Commission in 1994. Also, papers were prepared by staff for the January 1997 meeting of the Presidents Commission and in June of this year for the Division I Board of Directors. The Presidents Commission in 1994 accepted the report, which stated that the playoff concept had merit, but did not authorize continued study or support legislation to authorize a championship. The Division I Board last month received the staff reports, but expressed more interest in expanding the Association's role in the current postseason structure rather than supporting a championship structure similar to what is in place for all the other sports that the Association sponsors.

The reference to the December 1996 Sports Illustrated article by Tim Layden is not correct. The special committee, in fact, met separately with several different interest groups over several months. The members of the special committee, as referenced earlier, were convinced the concept had merit and forwarded a recommendation to the NCAA Presidents Commission that they be permitted to study further a Division I–A playoff. There is no record that the report was not seriously considered by the Commission, although that body elected not to proceed with further study.

The primary political forces opposing the playoff concept in 1994 were (1) a focus group of student-athletes, who represented several conferences, and (2) the Division I–A head football coaches. The American Football Coaches Association continues to oppose a national championship format. While neither of these groups would have had a vote on the issue, their positions were known and had an influence on chief executive officers.

In 1976, a proposal to establish a Division I–A football championship was introduced on the recommendation of a special committee that had studied the feasibility of a playoff. This proposal, however, was withdrawn and there was no discussion of it on the Convention floor. Another resolution was introduced at the 1988 Convention that would have attempted to measure the interest of Division I–A members in a national football championship. The Division I–A subcommittee of the NCAA Presidents Commission convened in September prior to the January Convention and considered this proposal. The minutes of that meeting indicate that the group expressed firm opposition. The Division I–A delegates at the Convention subsequently opposed this action with 98 yeas, 13 nays and one abstention.

The membership of those Division I–A conferences that have formed the alliance do form a majority of that (sub?)division.

Question 5. Discuss alternatives to the current Bowl Alliance structure.

What are some of the proposals for alternatives to the Bowl Alliance?

Describe what you know about the playoff proposal that is being discussed by a task force of Athletic Directors, led by the Athletic Director at the University of Texas.

Answer 5. I have shared with you similar information that was requested by the NCAA Presidents Commission and reviewed by that group last month. It is my under standing that the Division I–A Athletics Directors Association plans to under take a comprehensive study of the sport of football and the national champion ship question will be included. This group does not have the authority to enact a championship, although its members certainly could have an influence on their respective chief executive officers. The institutions that they represent continue to have the legislative forum to enact such competition or maintain the current bowl structure.

RESPONSES OF ROY F. KRAMER TO QUESTIONS FROM SENATOR MITCH MCCONNELL

Question 1. A lot of statements have been made about the Alliance's opposition to a playoff. These statements, however, are typically made by someone other than the Alliance. For example, it has been said that the Alliance created the Bowl Coalition and the Bowl Alliance to "avoid the creation of a NCAA-run national playoff * * * and to keep the power and money in the hands of the * * * [Alliance] conferences." What is your view of a playoff system?

Answer 1. The Alliance, as such, has no position on a playoff system. The decision whether to create a playoff system for Division I–A college football resides with the NCAA, which, of course, includes representatives of the various conferences that are members of the Alliance and the institutions that are members of the Alliance conferences but does not include representatives of the Alliance itself. The NCAA also includes representatives of non-Alliance conferences, institutions in those conferences, and independent institutions that play Division I–A football.

I can, however, reiterate the present views of the member institutions of the Southeastern Conference. Our member institutions have generally opposed the creation of a playoff system for a number of reasons.

First, it has been the belief of our institutions that a playoff system would destroy the bowl system. College football is a tradition-laden game, and the bowls have played a great role in developing those traditions. A playoff system will focus most if not all of the television and media attention on the playoff games. Advertising and corporate sponsorship dollars will follow, and we believe that it will be very difficult, if not impossible, for many of the bowl games to survive under the those circumstances. Our institutions believe that loss of bowl games would be detrimental for college football. The bowls have existed for more than 80 years and provided substantial support for college football. Communities across the nation are proud of their bowl committees, and rightly so. The institutions of the Southeastern Conference do not want to reduce the number of bowl games and are not anxious to weaken them in any respect. As a conference, we believe that a playoff system would do precisely that.

Second, and this reason fits closely with the first, we do not believe that there is a workable playoff system that can be crafted to take advantage of the current bowl system. A playoff will inevitably involve seeding of teams and extensive travel by some participating institutions. To make the playoff system economically viable, it is my view, and the view of the members of our conference, that the first and second round games would have to be played at on-campus sites. In other words, one team (most likely the higher seeded team) would play the early playoff games on its home field. That is what happens now in the Division I–AA, Division II, and Division III playoffs. Besides generating a great deal of controversy, that fact would preclude a number of fans from traveling to see their teams play.

Some playoff advocates have suggested that we simply play the playoff games at bowl sites. I would respectfully suggest that such a proposal is unworkable. It is simply not reasonable to expect the fans of our institutions to travel many miles from home, especially during the holiday season, incur the cost of game tickets, hotels, food, transportation, and incidentals for several weeks in a row in order to follow their teams throughout a playoff race. An example may illustrate my point. Suppose in an eight-team playoff format that the national championship game is scheduled for the Rose Bowl. Suppose further that Florida State University, as it often is, is a contender for the national championship and that it is set to play the University of Washington in a first round game at the Cotton Bowl in Dallas. The seedings call for the winner of that game to advance to a semi-final contest the following week to be played at the Fiesta Bowl in Tempe, Arizona. It will be enormously costly for the fans of Florida State and Washington to travel such great distances on consecutive weeks to see their teams play. This assumes, of course, that people can rearrange their schedules on consecutive weekends to make cross-country travel possible, which I believe is most unlikely.

Third, each of the bowl games certified by the NCAA provides a postseason experience for roughly 200 student-athletes. Last season, approximately 3600 student-athletes participated in bowl games. Because a playoff system would eventually reduce the number of bowl games, it would greatly reduce the number of student-athletes participating in postseason play. During the hearings and in supplemental questions posed to me, there is often an analogy drawn between a hypothetical football playoff and the NCAA basketball championship tournament. But no football playoff will ever be anything like the basketball playoff. I was head football coach at Eastern Michigan University for thirteen years. I am acutely aware that the physical demands of the game on players mean that a team can play only one game per week. An eight-team playoff, which would involve only 800 student-athletes, would take three weeks to complete. By contrast, the NCAA basketball tournament plays 63 games in that same three-week span. There is simply no way to play a tournament of that size in college football. Thus, our conference believes that the inevitable result of a playoff system will be to reduce the number of postseason opportunities available to student-athletes.

Fourth, in addition to the hardship on alumni and fans, the presidents of the institutions of the Southeastern Conference have a great concern that a national playoff will have a substantial impact on the academic missions of the participating universities. NCAA-member institutions, and particularly those with Division I–A football programs, have come under criticism over the years, some of it extremely pointed, claiming that athletic competition was given too high a priority. I cannot address all of those criticisms here, but I can say that the presidents of our member institutions are concerned that there be a proper balance between athletic competition and the core academic missions of the universities. None of the institutions of the Southeastern Conference exists to field a football team. Each exists to educate young people, help them develop their minds, and to enter the world outside the university with the skills necessary to succeed in life. College athletics helps our institutions fulfill that role, but what takes place on the college football field is not more important than what takes place in the lecture hall and the laboratory.

A playoff would take place in December when virtually all of the institutions in my conference hold final examinations for the first semester of the academic year. That would require student-athletes in our conference to play in the most important games of the season—for some players, the most important games of their athletic careers—at a time when their academic work is making the greatest demands on them as well. These playoff games would also have great impact on the remainder of the student body. Bands and cheerleaders would expect to travel to playoff games, and a number of students would also want to attend these games. The impact of a playoff on the institution as a whole would extend far beyond the student-athlete. The presidents of our member institutions have considered these factors and consistently felt that the benefits of a NCAA championship playoff in football are outweighed by the effects of such a playoff on their academic missions. That is an educational judgment, and I do not see how anyone not responsible for administration of a university can possibly be in a position to second-guess the reasonableness of that determination.

I also note that, despite the existence of a playoff system in Divisions I–AA, II, and III, these concerns of such importance that some institutions in those Divisions choose not to participate in the playoffs. The Ivy League institutions, for example, do not compete in the Division I–AA playoffs. Last season, Dartmouth won the Ivy League championship and had a perfect 10–0 regular season record but did not participate in the playoffs. Similarly, the University of Pennsylvania fielded undefeated teams in the earlier part of the decade and did not participate in the Division I–AA playoffs.

Fifth, we believe that adoption of the playoff system may diminish regular season football and the quality of our conference championship race. One of the criticisms that has been leveled at college basketball is that the NCAA championship tournament devalues regular season play. Teams need not win their conference championships or even have winning conference records to be selected to play in the NCAA tournament, and consequently, some have argued, the conference championship does not mean as much as it once did. The absence of a playoff in college football has placed paramount importance on the regular season and on the conference championship races. I believe that fact is borne out by the success of the Southeastern Conference championship game, which our conference has hosted for the last six seasons, and by the excitement generated last year by the inaugural championship games in the Big 12 Conference and the Western Athletic Conference. With the adoption of a playoff system, certainly our conference would have to reevaluate whether a championship game was in our long-term interest and whether such a game could be accommodated given the schedule adopted for the playoff. I believe others would have to make the same evaluations.

Finally, the playoff system is always portrayed as a panacea for team selection problems alleged to exist within the bowl system. A playoff system will have at least as much controversy as the bowl selection process and may have substantially more because those teams passed over by the selection committee will most likely have fewer, if any, postseason opportunities.

Before I complete my response, I want to comment briefly on the quoted statement in the question. I believe that quotation was taken from an article written by Tim Layden in *Sports Illustrated* in December 1996. Mr. Layden, who is a fine sportswriter, appeared before this subcommittee, and his written statement and oral remarks were of a far different tenor than those contained in the December 1996 article.

Question 2. If you could be convinced that both players and fans preferred a playoff system, and assuming there was some way to do that in conjunction with the bowls—would you be open to a playoff system?

Answer 2. Our conference is always open to new ideas. However, as recently as three years ago, the presidents of the institutions in the Southeastern Conference considered the concept of a playoff—not a concrete playoff format—and voted unanimously against it. In my view, before there is any change in that opposition, the problems mentioned in my response to Question No. 1 would have to be resolved, and as yet, the member institutions of my conference have not seen any playoff concepts or proposals that would do so.

Question 3. In the Alliance's legal brief, you repeatedly state that there is no groundswell of support for a playoff system. How can you make this statement in the face of the testimony we're hearing here today? Moreover, how can you make this argument when a recent Gallop poll shows that 70% of college football fans prefer a play-off system over the current bowl system?

Answer 3. The statement in question appears only once in the Alliance's submission to the Department of Justice and was addressed to the fact that there is no groundswell of support for a playoff system among NCAA Division I–A members. I think that statement is undeniable because a substantial majority of those institutions have opposed the creation of a Division I–A playoff when the issue has been raised. We do not believe that the antitrust laws compel the NCAA to sponsor a Division I–A playoff and certainly not when a substantial majority of the Division I–A membership is opposed to such a playoff.

With respect to the statements made at the hearing, I do not believe that they can be construed as a "groundswell of support for a playoff." Even the witnesses critical of the Alliance were not unanimously in favor of a playoff. Indeed, Mr. Circuit, a representative of the Holiday Bowl, stated his firm opposition to a playoff.

With respect to the Gallop poll mentioned in the question, I am not familiar with that poll or the question actually posed to the respondents. But as is often the case in these matters, comparing the current bowl system to an abstract "playoff" is not meaningful. The meaningful comparison is to measure a concrete playoff proposal—with all of its ramifications for the bowl system and college football generally—with the current system. In our view, when faced with that choice, most college football fans would prefer the current bowl system.

Finally, as I mentioned in my response to Question No. 1, there are educational imperatives for the members of my conference that have played a great role in their opposition to a playoff system for Division I–A. Those educational concerns and the weight to be given to them should be decided by university administrators, not by polls of college football fans. For example, if a poll of fans showed that 70 percent favored expansion of the college football season to 15 regular season games instead of the 11 games that most teams currently play, I do not believe that the presidents of our universities could be legitimately criticized for failing to go along with such a proposal. The presidents of our institutions must place football and all other athletic endeavors in the context of the overall mission of their respective universities. As I said earlier, I simply do not see how their judgment on the proper balance between football and the academic mission of the university can possibly be second-guessed.

Having said that, I am not suggesting that the wishes of the fans are not important. The desire of the fans, among others, to have a national championship game is the major reason behind the creation of the Alliance. There are other considerations here, however, and they cannot be ignored.

Question 4. Again, in the Alliance brief, you argue that "The Alliance Agreement Has No Anticompetitive Effects." (p. 40) The Alliance made a similar argument in a memorandum to me in 1993—when the Bowl Coalition did not even have a theoretical opening for at-large teams. I must confess that I find your absolutist argument a bit hard to swallow. Let's spell this out.

Question 4a. Immediately prior to the existence of the Bowl Coalition/Alliance, how many "open," uncommitted slots did the Sugar, Orange, and Fiesta Bowls have?

Question 4b. Under the present Bowl Alliance agreement, read in a light mist favorable to the Alliance, how many slots are theoretically open to non-Alliance teams?

Question 4c. So my understanding is that prior to the Bowl Coalition/Alliance, there were four open slots. Is that right?

Question 4d. And under the current Bowl Alliance agreements, there are two open slots. Is that right?

Question 4e. Isn't is fair then to say that there is less competition as a result of the Bowl Alliance?

Answers 4a–4e. I count at least five subparts and have found even more assumptions built into this question. I will answer each of the subparts individually and then explain why the conclusion sought to be drawn—that there is less competition as a result of the Alliance arrangement—is not correct.

Immediately before the formation of the Bowl Coalition, the Fiesta, Sugar, and Orange Bowls in total had four uncommitted slots. Under the Alliance agreement, there are two at-large slots open to teams outside the Alliance conferences. There is nothing theoretical at all about the availability of these slots to other teams. The selection committees of each of the three bowls select at-large teams from those qualifying for the at-large pool based on their own criteria.

Accepting for a moment that this is a "reduction" in the number of "open" slots, that does not mean that there is less competition. The question wrongly assumes that any "reduction" in the number of "open" bowl slots is a reduction in competition. If the number of "open" slots were the test of whether there was a reduction in competition, then each of the individual contracts entered into by a conference with a bowl would reduce competition because each of those contracts also reduces the number of "open" slots in bowl games. If that argument were taken to its logical conclusion, then the Rose Bowl's agreements with the Big Ten and the Pac-10, which have been in place for about 50 years, would have reduced competition because those agreements mean that there are no "open" slots in the Rose Bowl. No one has seriously suggested or can suggest that the Rose Bowl's relationships with the Big Ten and Pac-10 have reduced competition in any way, and if that were the case, other contractual arrangements, including the WAC's relationship with the Holiday and Cotton Bowls and Conference USA's agreement with the Liberty Bowl, would also reduce competition.

As we understand them, the antitrust laws measure the anticompetitive effects of an agreement by its effect on total output. The Alliance's position on the proper measure of output is set forth in its submission to the Department of Justice (pp. 20–22). But even if we indulge the assumption in the question that output is measured by the number of bowl slots, the Alliance arrangement has no effect on output. The total number of bowls is established by the NCAA. The Alliance agreement does not change that number in any respect. It also does not affect the number of total slots in the Alliance bowls or in any other bowls.

The question also focuses on "open" slots in three bowl games, but that ignores the fact that the commitment of certain conference champions to the Alliance bowls opened slots in other bowl games. Before the formation of the Bowl Coalition, individual agreements between various bowls and certain conferences in the Alliance had produced the following:

Rose Bowl—Big Ten champion vs. Pac-10 champions
Sugar Bowl—SEC champion vs. Open
Orange Bowl—Big Eight champion vs. Open
Cotton Bowl—Southwest Conference champion vs. Open
Citrus Bowl—ACC champion vs. Open
Fiesta Bowl—Open vs. Open

In these six bowl games, there were six committed slots and six open slots. The current Alliance arrangement has no effect on the Rose Bowl arrangement. The Cotton Bowl is not part of the Alliance. Thus, the previously committed slot to the Southwest Conference in that game became open, and the WAC entered into an arrangement for its champion to participate in that game if selected. Brigham Young, of course, played in the Cotton Bowl last season. The Citrus Bowl was not part of the Bowl Coalition or Alliance, and the slot previously occupied by the ACC champion was opened to other teams. In addition, the Southwest Conference has been dissolved and the Big East Football Conference was formed.

The ultimate effect of the Coalition and Alliance arrangements is to "reduce" the number of uncommitted slots in the Fiesta, Orange, and Sugar Bowls from four to two and to "increase" the number of "open" slots in the Cotton and Citrus Bowls from two to four. In short, the Alliance has only affected where certain teams play but not the total number of "open" slots in bowl games. Every "reduction" in open slots in the Alliance bowls has been offset by a corresponding "increase" in "open" slots in another bowl game. Those bowls have subsequently entered individual arrangements with other conferences—one of which involves the WAC and none of which is related to the Alliance. The point is that those slots were opened for other conferences to compete to make arrangements for their teams, and that result flows directly from the Coalition and Alliance arrangements.

Finally, the question wrongly assumes that competition is harmed if it is more structured. Before the formation of the Coalition, the bowl system had essentially an "open" system as the question seems to define that term. National championship games were very rare (only nine times in the 45 years before the Coalition); it often was impossible to have matchups between the champions of different conferences, and the rush to sign up teams early occasionally led to mismatches.

The Bowl Coalition and the Alliance have already provided three national championship games in their first five years of operation, and a championship game will be virtually certain once the Rose Bowl, the Big Ten and Pac-10 champions are included after the 1998 regular season. In addition, the Rose Bowl will be open to teams outside the Big Ten and Pac-10 for the first time since the end of World War II. Finally, independent teams and teams from non-Alliance conferences already have a guaranteed berth in an Alliance bowl if they are ranked either one or two, and, under modifications just announced, they, in most circumstances, will have a guaranteed slot if they rank in the top six. This stands in sharp contrast to the prior system. In 1984, Brigham Young finished the season unbeaten and ranked number one in the nation but did not play in a New Year's Day bowl game. Instead, it played in the Holiday Bowl against a 6–6 Michigan team. It is ironic that complaints are now being made that the Alliance is anticompetitive when Brigham Young played in its first New Year's Day bowl game in a bowl slot made available by the formation of the Alliance arrangement itself. Under the Alliance arrangement, if Brigham Young stages a repeat of 1984, it is guaranteed a slot in the national championship game and may even play in the Rose Bowl if it qualifies for the national championship game after the 2001 regular season.

In short, the fundamental premise of the question is inconsistent with the antitrust laws as we understand them. Competition is not measured by the effects of a system on a single competitor or group of competitors or, in this question, by the number of "open" slots available for them. The ultimate objective of competition is consumer satisfaction, and the Bowl Coalition and Alliance have clearly provided a superior product to consumers. The willingness of television networks, advertisers, and sponsors to increase payments to the bowls for the Alliance bowl games is a direct reflection of consumer satisfaction because those entities depend on the games to appeal to football fans in order to gain some benefit from their payments.

There is one other point to be made. The question refers to a submission by the Alliance to Senator McConnell in 1993. That submission was not made by the Alliance or any of the conferences in the Alliance but by the bowls that were the founding members of the Bowl Coalition. We do not disagree with anything in that submission, but I point this out because it reveals an important fact. If the Coalition and Alliance arrangements were anticompetitive, the participating bowls would be the most obviously injured parties. They would not have made such a submission if they had any complaints about the arrangement.

Question 5. A few years ago, the Holiday Bowl—which has sent a representative to testify here today—argued that there was an anti-overlap agreement among the Alliance conferences. Under the terms of such an agreement, no Alliance bowls or teams would be able to compete in television time slots opposite other Alliance bowls.

Question 5a. Did some form of an anti-overlap agreement exist in the original Request for Proposal?

Question 5b. Did some form of anti-overlap agreement exist in the actual written Alliance contract?

Question 5c. Prior to the existence of the Bowl Coalition and Bowl Alliance—say 1988 or 1989 or 1990, were any games played opposite either the Sugar, Orange or Fiesta bowls?

Question 5d. Since the Bowl Coalition and Bowl Alliance came into effect in 1991, have any bowl games been broadcast opposite the Sugar, Orange or Fiesta bowls?

Question 5e. Are you aware of other bowl agreements within your own conference that prohibit playing opposite Alliance bowls?

Answers 5a–5e. There was no "anti-overlap" agreement in the original Alliance request for proposal. The original Alliance request for proposal stated as follows:

> [T]he participating conferences have independently agreed that their member institutions will not participate in any non-Alliance bowl game scheduled so that its three-and-one half hour time period would overlap any Alliance Bowl's time period by more than thirty (30) minutes. Further, no Alliance Bowl may be scheduled to intrude into the time period of any other Alliance Bowl or the Rose Bowl Game by more than thirty (30) minutes.

In response to questions by some of the bowls responding to the RFP about the meaning of this language, the Alliance clarified it and stated that "the member conferences of the Alliance will not collectively guarantee exclusivity but will leave this issue to be negotiated individually between each of the conferences and the bowls." The final Alliance agreement with the Fiesta, Orange, and Sugar Bowls contains a provision expressly stating that there is no such agreement:

> It is expressly understood by the [Alliance] Bowls that the Alliance will not restrict in any way the right of Notre Dame or any individual member Institution of a Conference from participating in any Non-Alliance Postseason Game if Notre Dame's team or such Institution's team is not selected to play in one of the [Alliance] Bowl Games.

With respect to other agreements by the Southeastern Conference not to play opposite the Alliance bowls, the SEC received individual requests from the Fiesta Bowl, Orange Bowl, and Sugar Bowl, each asking that our teams not play in other bowl games that were played substantially at the same time as the bowl making the request. The athletic directors of our institutions considered those requests and informed those bowls that Southeastern Conference institutions will not play in other bowl games that are scheduled at substantially the same time as the Fiesta, Orange, or Sugar Bowls. As a general practice, we have attempted, to the extent possible, to avoid having teams in our conference appear in bowl games that are scheduled at substantially the same time—including not only the Alliance bowls but also the Peach, Outback, Citrus, and Independence Bowls, which also take SEC teams each year—so that our fans will be able to watch all SEC teams compete in postseason play without have to choose between games.

Finally, with respect to playing times of games in past years, I want to correct one factual error in the question. The Bowl Coalition began play after the 1992 season, not the 1991 season. On the substance of the question, I am not certain of the exact playing times for each of the three bowl games each year, but my recollection is that until the late 1980s, no bowl game was played opposite the Rose Bowl. Beginning in the late 1980s, when the Rose Bowl went from NBC to ABC, the Fiesta Bowl was generally played on New Year's Day in the late afternoon eastern time at about the same time as the Rose Bowl. In the late 1980s, the Orange Bowl and Sugar Bowl were generally played on New Year's night at about the same time as one another. There may have been some exceptions, such as when New Year's Day fell on a Sunday and some bowls chose to play on that day while others did not. The playing times that I have described generally existed from the late 1980s up until the bowl games played following the 1994 regular season. With the Bowl Alliance beginning after the 1995 regular season, the Fiesta, Orange, and Sugar Bowls have been scheduled on different days.

Question 6. In your brief, you spend a great deal of time arguing that consumers are happy with the current bowl-set up, and in particular, happy with the Alliance bowl games. You base this conclusion on television ratings. Would you not agree with me that those television ratings could overstate consumer satisfaction if consumers have no other choice of a game to watch in that prime time New Year's television slot? In other words, maybe the reason that consumers kept watching No. 7 Penn State trounce No. 20 Texas is because it was literally the "only game in town"?

Answer 6. First, let me say that we do not measure consumer satisfaction solely by television ratings. In our submission to the Department of Justice, we point out that the willingness of the bowls, television networks, corporate sponsors, and advertisers to increase payments for the Alliance games over bowl games in prior years is a clear reflection of consumer satisfaction with the Alliance arrangement. The television ratings further confirm that point.

I cannot agree with the statement that the television ratings overstate consumer satisfaction. Last year's Citrus Bowl, which involved Tennessee and Northwestern, was telecast opposite the Cotton Bowl involving Brigham Young and Kansas State. Neither Tennessee nor Northwestern was ranked as high as Brigham Young and neither had received the same amount of media attention. The Citrus Bowl game was not close (Tennessee won by 20 points), and yet its ratings points were 34 percent higher than the Cotton Bowl. If fans were dissatisfied with that game, they could have turned over to the Cotton Bowl. Apparently, they chose not to do so.

Further, I cannot agree with the statement that the Fiesta Bowl was the "only game in town." Television viewers have substantially more choices than network programming these days. Cable and pay-per-view offerings, along with the prevalence of home video and other media, give the public many more choices than they had even ten years ago. Those of us in college football are keenly aware that there are many entertainment options available to the public and that college football competes with those other forms of entertainment.

Question 7. The current Alliance agreement provides that a non-Alliance school, such as BYU, may be eligible if it either (a) has 8 wins, or (b) is ranked higher than the conference champion from one of the Alliance conferences.

Question 7a. Which poll or rating system do the conferences and bowl committees use to determine the ranking of the Alliance and Non-Alliance schools?

Question 7b. If the Sagarin ratings are not used for the purposes of determining whether a non-Alliance school is ranked higher than an Alliance conference champion, then why does the Alliance consistently cite the Sagarin ratings in its brief to justify the decision NOT to pick BYU?

Answers 7a and 7b. Before responding to the question, I want to correct some factual errors in the question. The at-large pool of Alliance teams consists of those teams that:

(a) Win eight games in the regular season, not counting exempt preseason games;

(b) Are ranked among the top 12 bowl-eligible teams in the Associated Press poll or CNN/USA Today poll; or

(c) Are ranked no lower than the lowest ranked conference champion with a guaranteed slot in one of the three Alliance bowl games.

A team is included in the at-large pool if it meets any one of the three criteria. Brigham Young qualified under all three criteria last year, as did several runner-up teams in the Alliance conferences (Nebraska, Penn State, Colorado, Tennessee, Northwestern, and North Carolina).

The Alliance agreement uses the Associated Press and the CNN/USA Today polls to determine who is included in the at-large pool. Once that determination is made, the bowls alone are responsible for selecting the two at-large teams. The question, therefore, rests on a mistaken premise that the Alliance has any responsibility for the selection of at-large teams. That decision was and remains solely with the bowls applying their own selection criteria.

The Alliance cited the Sagarin rankings in its submission to the Department of Justice to illustrate some fallacies in the complaint letter. The complaint letter assumes that polls alone should determine who plays in Alliance bowl games. The Sagarin rankings illustrate the point that other factors can often be included in the analysis of which team a bowl chooses to pick, and that there are other ranking systems that factor in strength of schedule and location of games that can play a role in determining the quality of a particular team. In addition, neither the Associated Press poll nor the CNN/USA Today poll ranks all Division I football teams, making comparisons of strength of schedule and other such factors impossible using solely those tools.

Question 8. If, in fact, the Sagarin ratings are important to the Alliance, then I would think that the Alliance would be interested in the following fact: Factoring in East Carolina's commitment to join the C–USA, the Sagarin ratings place the CUSA ahead of the Big East Conference and the Atlantic Coast Conference. Both the Big East and the ACC have a guaranteed berth in the Alliance bowls. Under the Alliance's own standards, don't these Sagarin ratings suggest that the C–USA is more deserving of a guaranteed berth than either the Big East or the ACC?

Answer 8. Even if one assumes the validity of including East Carolina's play in Conference USA's Sagarin ratings, this question assumes that the guaranteed slots were created in a vacuum and are subject to change easily and on the basis of a single performance by a conference in a single year. This is not correct. The guaranteed slots are integral to the existence of the Alliance arrangement and to the creation of a national championship game.

To understand the role of the guaranteed slots, it is perhaps best to start with the basic purpose of the Alliance. The current Alliance was designed to maximize the possibility of a national championship game and to match other high quality teams in bowl games. The new Alliance arrangement that will begin after the 1998 regular season will virtually guarantee the existence of a national championship game. NCAA rules limit Division I–A teams qualifying for postseason play to participation in one postseason college football game each year. Accordingly, the only way to have a national championship game under existing NCAA rules is to pair the teams ranked one and two in a bowl game at the end of the season.

How can that goal be accomplished? As I stated in my earlier remarks, this process has been evolutionary and was not created in a vacuum or on a blank slate. Before the formation of the Alliance, nearly all of the Alliance conferences each had individual agreements with various bowl committees for their champions to host various bowl games. Those that did not had offers for such agreements. A list of those contractual commitments of the Alliance conferences is included in my response to Question No. 4. Those contractual commitments often precluded conference champions from playing against one another in bowl games. For example, the Big Eight champion could not play against either the ACC, SEC, or Southwest Conference champion in a bowl game. Further, neither the Big Ten nor Pac-10 champions could play against anyone else in a bowl game. The result was that it was often impossible to match the top two teams if both were conference champions. In 1990, for example, Colorado and Georgia Tech were ranked number one and number two respectively, but could not play against one another in a bowl. The next year, Miami was ranked number one in one poll, while Washington was ranked number one in another poll. Those teams could not be paired in a bowl game to decide the national championship.

Before the early 1990s, the slots in certain bowl games not filled by conference champions under affiliation agreements were often filled by either highly ranked runner-up teams from other conferences or highly ranked independents, teams that were not members of any conference. Until the early 1990s, a number of major independent teams consistently were in the hunt for the national championship. Among them were Miami, which won four national championships between 1983 and 1991, Penn State, which won two national championships in the 1980s, Notre Dame, which won the national championship in 1988 and has won more national titles than any other institution, and Florida State, which has finished ranked among the top four teams every year since 1987 (including a national championship in 1993) and has consistently been ranked since the late 1970s. By the early 1990s, however, each of those teams except Notre Dame had announced its intention to join an existing football conference or be part of a new conference. In addition, other major independent teams also announced that they would join conferences, including West Virginia, Syracuse, Boston College, and South Carolina.

As a result, the pool of independent teams that had traditionally competed for the national championship and that would not be subject to conference/bowl affiliation agreements in the future was dwindling. The old bowl system had never been able to match the top two teams very often—only nine times in 45 years did the two top-ranked teams play in a bowl—and such games were even less likely to occur once the major independents joined conferences. In addition to the decreasing possibility of a national championship game, the rush by the various bowl games to fill their uncommitted slots led bowl committees to make what amounted to invitations to certain teams early in the season based on results achieved after six or seven games and not on the record of a full season. These early invitations occasionally led to mismatches in the bowl games or to games with less fan appeal.

These changes in the college football landscape prompted formation of the Bowl Coalition. After the bowl games played in January 1992, the ACC's affiliation agreement with the Citrus Bowl expired. Around that time, the ACC and the newly formed Big East Football Conference, which included Miami, Syracuse, and West Virginia, among other teams, were each offered very attractive affiliation agreements by what was then known as the Blockbuster Bowl. The payout to the champions of each of those conferences, had they accepted those affiliation arrangements, would have been substantially higher than the payouts made by other bowls to their participating institutions, with perhaps the exception of the Rose Bowl. Acceptance of those offers would have also made it very difficult to create a national championship game.

Instead of accepting the offers from the Blockbuster Bowl, the ACC and Big East chose to join with the Big Eight Conference, the Southwest Conference, the Southeastern Conference, and Notre Dame as well as with the Cotton, Fiesta, Orange, and Sugar Bowls in the formation of the Bowl Coalition. The Bowl Coalition did not alter any of the existing affiliation agreements between the Cotton Bowl and Southwest Conference, Orange Bowl and Big Eight Conference, or Sugar Bowl and Southeastern Conference; those contracts still had several years to run when the Coalition was formed, and neither the participating bowls or the conferences wanted to alter those arrangements. Instead, the Coalition provided for a selection order for those bowls in the hope that they could create a national championship game given the conference/bowl affiliation agreements existing at the time. The Fiesta Bowl, which had two uncommitted slots in its game, almost always chose last in the Bowl Coalition selection-order.

It was quite clear that the possibility of creating a national championship game under the Coalition arrangement depended heavily on the participation of the ACC and Big East. Teams in those conferences were consistently challenging for the national championship every year, and in fact, in the first two years of the Coalition arrangement, the champions of the Big East and ACC each participated in the national championship game. To participate in the Coalition arrangement, those two conferences had to turn down the very attractive Blockbuster Bowl offers that I previously mentioned. It was not reasonable to expect them to give up such attractive and guaranteed bowl slots for their champions without some assurance that, in an alternative arrangement, their champions would have a comparable bowl in which to play. The Coalition bowls wanted the ACC and Big East to participate in the arrangement and were quite willing to agree to guarantee invitations to the respective champions of those conferences. To obtain Notre Dame's participation, those bowl games were also willing to guarantee it a slot in a Coalition game in years when it met certain performance criteria. The Coalition arrangement was not perfect and could not guarantee a championship game every year, but it served its purpose during its three-year existence, producing a one-two matchup on two occasions.

The next opportunity to increase the likelihood of a national championship game came in 1995. Despite the Coalition's success, it was still clear that the affiliation agreements between certain bowls and certain conferences would in some years make a national championship game impossible. For example, under the Coalition structure, a pairing between the Big Eight champion and SEC champion was impossible because of the affiliation agreements committing those teams to different bowl games. Each of those agreements was set to expire after the bowl games in January 1995. In addition, the Southwest Conference announced that it would dissolve after the 1995–96 academic year. Four of its eight teams announced that they would join with the existing members of the Big Eight to form a new conference, the Big 12.

In anticipation of these changes, the commissioners of the conferences that ultimately became members of the Alliance met to determine whether there was some way to build on the successes of the Coalition and to further increase the likelihood of a national championship game. The result was the Alliance arrangement.

Why does the Alliance arrangement contain guaranteed slots for the champions of the ACC, Big East, Big 12, and SEC? The simple answer is that such guarantees are necessary if the arrangement is to exist at all. As our submission to the Department of Justice demonstrates, to create the possibility of a national championship game, it was absolutely necessary to have the participation of each of those four conferences. Those conferences, along with the Big Ten, Pac-10 and Notre Dame have consistently produced teams in the national championship picture. Exhibit C of our submission to the Department of Justice lists the Associated Press national champions for every year since 1967. Notre Dame and current member institutions of the Alliance conferences have produced 29 of the 30 champions listed. That chart could be extended back even further, and one would find that every Associated Press national champion since 1946, except for Brigham Young in 1984, was fielded by Notre Dame or a team that is currently a member of an Alliance conference. Thus, I am puzzled when I am asked why history and past records of achievement are important. The goal of the Alliance arrangement is to create a national championship game, and it must be done with only one bowl game. In other words, there is only one chance each year. If the top two teams are not available, then there is no game. To achieve that goal, the only rational way one can proceed is by looking at who is likely to be in the hunt to play in that game each year. History shows that it is the teams in the Alliance conferences and Notre Dame.

That being the case, to make an Alliance arrangement work and to produce a national championship game, it is necessary to get those conferences and Notre Dame to participate in an arrangement that will achieve the purpose. Without the participation of one or more conferences, there is simply no national championship game each year.

Every one of the Alliance conferences with a guaranteed slot had an affiliation agreement with a major bowl game for its champion or had turned down such an agreement to participate in either the Coalition or the Alliance. In my remarks to the subcommittee, I mentioned the close ties that had developed between certain bowls and certain conferences during the years of those affiliation agreements. During 1994 and 1995, when the Alliance was being formed, I had to inform the member institutions of my own conference that, under the proposed arrangement, our champion would not participate every year in the Sugar Bowl. I cannot adequately describe how difficult it was for some of our member institutions to agree to that. Our champion had participated in the Sugar Bowl for many years. It was part of our conference tradition, and the opportunity to play for a Sugar Bowl bid added great excitement to our conference championship race. The Sugar Bowl was a superb, well-managed event (and still is). Its committee had done a fine job over the years in making the game attractive to our teams and fans. At the same time, we like to believe that the Southeastern Conference helped build the Sugar Bowl into the game and event that it was (and is). Our fans had consistently supported the Sugar Bowl by buying tickets, traveling to New Orleans in large numbers, and participating in the numerous activities in the city affiliated with the bowl game. In a very real sense, we felt that we had helped the Sugar Bowl build its reputation and equity in its name.

Despite the concerns of some of our members, I believed that the proposed arrangement, with its promise of a national championship game in most years, was a tremendous step forward for college football. It gave college football a real possibility of crowning a champion on the field while at the same time preserving the rich tradition of the bowl games and the maximum number of postseason opportunities for all student-athletes. But the price of participation for our conference was very heavy, giving up the traditional spot for our champion in the Sugar Bowl and the equity in an arrangement that had been integral to the success of both our conference and the Sugar Bowl itself. As compensation for contribution of that equity, had the Alliance arrangement not guaranteed the Southeastern Conference champion a slot in a bowl game comparable to the Sugar Bowl, the member institutions of my conference would have never agreed to participate in the arrangement. We would have simply renewed our relationship with the Sugar Bowl. If I may be permitted for a moment to tout the achievements of the member institutions of my conference, without the participation of the SEC, there would have been no national championship game in several recent years. In fact, the champion of my conference has played in two of the three one-two matchups created by the Coalition and the current Alliance.

The Big Eight/Big 12 conference faced a similar choice as the SEC. That conference had a longstanding and valued relationship with the Orange Bowl, which it had to give up in order to participate in the Alliance arrangement. Its members faced the exact same considerations as members of the Southeastern Conference. Without a guaranteed slot in one of the Alliance bowls, the Big Eight/Big 12 could not have been induced to participate in the arrangement, and again, there would have been no national championship game. The Big Eight champion played in one of the two national championship games created by the Coalition and in the national championship game created in the first year of the Alliance. Although I do not know what it would have done absent a guaranteed slot, it is certainly reasonable to expect that the Big Eight/Big 12 would have given serious consideration to renewing its traditional agreement with the Orange Bowl. It certainly would have entered an affiliation arrangement with some bowl.

As for the ACC and Big East, those conferences had demonstrated their ability to produce both national championship teams and to attract substantial offers for their champions from other bowl games. To induce them to participate in the Alliance arrangement, their champions had to be guaranteed slots in one of the Alliance bowls or they, too, would have entered affiliation agreements with bowl games. In short, the guaranteed slots fill a vital function for the Alliance. Without them, none of the conferences who participate could be induced to join the arrangement, and the absence of any one conference makes it impossible to improve the likelihood of a national championship game.

From a business perspective, participation of all of the Alliance conferences was also necessary if the arrangement was going to be attractive to the various bowls committees, to the television networks, corporate sponsors, and advertisers—who are vitally important to the financial health of the bowls—and to the fans of college football—who the networks, sponsors, and advertisers hope to reach. Over the 15 years preceding the Bowl Coalition, the three Alliance bowls, for example, hosted a total of 90 teams among them. 89 of those 90 teams were fielded either by Notre Dame or teams currently in the Alliance conferences. When the Alliance members began discussing the Alliance arrangement in 1994, we did not know what the response from the bowls to the proposed arrangement would be. Whatever proposal might emerge would essentially ask the bowls either to give up longstanding and valuable relationships with specific conferences or, for those bowls that did not have such relationships, to forego creating them in the future. Unless the Alliance arrangement offered a substantial likelihood of a national championship game, we believed that the bowls would likely find individual affiliation arrangements more favorable to them. In my view, the nine enthusiastic and attractive offers that we eventually received from bowls who bid in response to the Alliance's request for proposal—each offering substantially increased payments to the participating teams—validates the judgments we made at that time and demonstrates that the Alliance arrangement was substantially more valuable to the bowls, television networks, corporate sponsors, advertisers, and fans than the prior bowl system.

The same considerations are at work in the new Alliance arrangement. The Big Ten and Pac-10 champions were not included in the original Alliance arrangement because those teams were committed to play against one another in the Rose Bowl. Unlike the other affiliation agreements, the Big Ten and Pac-10's respective contracts with the Rose Bowl did not expire after the game played in January 1995. Because the current Alliance arrangement does not include the champions of those conferences, it cannot guarantee a national championship game every year. It comes close—closer than ever before in college football—but it cannot guarantee such a game each year.

Since the formation of the current Alliance, the Big Ten and Pac-10 have reached an agreement with the Rose Bowl that will allow their champions to participate in the Alliance arrangement and thus participate in another bowl game if that bowl is scheduled to host the national championship and if the Big Ten champion or Pac-10 champion is ranked either one or two. Beginning after the 1998 season, college football will have a national championship game every year.

It certainly was not easy to get the participation of the Big Ten and Pac-10 champions or the Rose Bowl. The affiliation between those conferences and the Rose Bowl has existed for a half century and, as Mr. Delany stated in his prepared statement, is part of the fabric of those conferences. Those conferences simply are unwilling to give up their guaranteed berths in the Rose Bowl unless they are to play in a national championship game. Thus, without the guaranteed slots for certain conferences, there is no Alliance arrangement and no guaranteed national championship game.

The question also suggests that guaranteed slots should be made available to other conferences or to other conferences in lieu of some of those conferences with guaranteed slots. Although the question uses Conference USA as an example, at the time the current Alliance was formed, Conference USA did not exist and did not conduct a championship race in football. The WAC, however, did exist. Thus, the question could be asked why the WAC champion did not get a guaranteed slot in the Alliance arrangement.

There are two points to be made in response to that question. First, the current Alliance arrangement involves only three bowl games with a total of six slots. Four of those slots had to be guaranteed to champions of the ACC, Big East, Big 12, and SEC, if the arrangement was to exist at all. Remembering that the purpose of the Alliance arrangement is to create a national championship game, it was absolutely necessary to have two open slots in those three games. There was always a possibility that two teams that were not conference champions could be ranked number one and number two and thus would be the two teams to play in the national championship game. Again, history could not be ignored here. Notre Dame has traditionally produced highly ranked teams and has often been in the national championship chase. Based on its historical record of achievement, there is a reasonably good possibility that, in any particular year, Notre Dame will be ranked number one or two at the end of the regular season. Indeed, it is far more likely that Notre Dame will participate in a national championship game than any institution in the WAC or any other non-Alliance conference or any other independent team. Thus, the Alliance arrangement had to account for the possibility of Notre Dame playing in a national championship game. That required at least one at-large slot.

There is also the possibility that a team in one of the Alliance conferences might be ranked number one or number two and yet not be a conference champion. For example, in 1984, the year Brigham Young won the national championship, the University of Washington finished the season ranked number two in the final Associated Press poll. Yet Washington was not the champion of the Pac-10 and did not receive that conference's automatic berth in the Rose Bowl. Since the goal of the Alliance arrangement was to maximize the possibility of a national championship game, it was necessary to have two open slots in case that two teams who were not conference champions were the top two teams in the nation.

In developing the Alliance selection procedures, we, of course, did not ignore the possibility that a team from the WAC or another non-Alliance conference or an independent other than Notre Dame might be ranked one or two at the end of the regular season. Thus, we felt it was absolutely necessary to have some open slots and to invite teams from non-Alliance conferences and the independent ranks to make themselves available to play in a national championship game should they be ranked among the top two teams. If teams from the WAC and Conference USA finish the season ranked number one or two, then they will play in the national championship game. Of course, even if they are not ranked among the top two teams, the at-large slots are open to them (and other teams outside the Alliance conferences), and if selected, they may play in an Alliance bowl. I reiterate, however, that the decision on which at-large teams to invite rests solely with the bowls.

Second, leaving two at-large slots open was necessary to give the bowls flexibility to create matchups that they perceive best for their respective games. By creating a national championship game, the Alliance arrangement focuses a great deal of attention on one of the Alliance bowls. In many, if not most, years the teams playing in the national championship game will be champions of the Alliance conferences with guaranteed slots. With the existence of a championship game, the other Alliance bowls will not have national championship implications. Accordingly, it is necessary to give those bowls some flexibility to create matchups that they believe will have the greatest fan appeal, sell the most tickets, and attract the broadest interest. The criteria they apply in making those decisions are strictly their own and may vary from year to year depending upon the members of their selection committees and the pool of available teams. We mentioned some of the factors that may influence their decisions in our response to the Department of Justice (pp. 35–36).

We have recently announced that, as part of the new Alliance arrangement, the champions of the WAC and Conference USA will be guaranteed slots in one of the Alliance bowls in most circumstances if they are ranked among the top six. That increases the likelihood that one of these institutions will play in an Alliance game, but it does reduce the flexibility of the bowls in creating matchups of their own choosing.

Given the number of bowls in the Alliance arrangement, it is simply not possible to have a guaranteed slot for every single Division I–A conference. If every single Division I–A conference were to be guaranteed a slot in an Alliance bowl and if two at-large slots were to remain open in order to create the possibility that independent and runner-up teams could participate in the national championship game, the Alliance would have to expand to six bowl games. Expanding the number of Alliance bowls is not feasible without financial support from television networks, corporate sponsors, and advertisers. Their willingness (or lack thereof) to support additional bowls reflects the fan interest that those particular bowl games can be expected to generate. Last year, the Alliance informed the WAC that it would support efforts by that conference to persuade ABC to add a fifth bowl, which would guarantee a slot to the WAC champion, to the new Alliance arrangement. We understand that the WAC approached ABC with such a proposal, but ABC had no interest in adding a fifth bowl to the package.

Finally, let me reiterate that the Alliance is a relatively short-term arrangement. The current agreement will run for one more year, and the new Alliance arrangement has an initial term of four years. We do not know what will happen in the future, but the relatively short duration and the flexibility of the arrangement leaves open the possibility that the Alliance structure could be changed to take account of circumstances that are not now foreseeable.

Question 9. What role do the Alliance conferences play in the selection process? How many slots are absolutely mandated by the Alliance conferences?

Answer 9. Under the current Alliance arrangement, four of the six slots in the three Alliance bowl games are guaranteed to the champions of the ACC, Big East, Big 12, and SEC.

As I previously stated, the Alliance conferences play no role in the selection of at-large teams. The agreement between the Alliance and the Fiesta, Orange, and Sugar Bowls does, however, require the bowl with the first two selections to pair the number one and number two teams against one another if those teams are available and regardless of their conference affiliations. Therefore, if an at-large team is ranked one or two and is available for selection in a national championship game, then the Alliance bowl with the first selection priority must pick that team regardless of its conference affiliation.

Question 10. Describe any conversations you may have been privy to regarding the 1996 selection process. Specifically, describe any of your conversations between the bowls, commissioners, and the networks regarding the decision NOT to select BYU—in spite of their record and ranking.

Answer 10. I received a call from representatives of the Fiesta Bowl and informed them that the decision of which at-large team to invite was strictly their own. I also spoke to representatives of the Orange Bowl who asked about the possibility of inviting the University of Tennessee, which is a member of the Southeastern Conference, to that game. I informed the Orange Bowl representatives that I believed that Tennessee would be an excellent choice and that it would be able to sell a substantial number of tickets to its fans. During my conversations with bowl officials, I did not suggest that a bowl should not select Brigham Young or any other eligible team. I am not aware of any conversations between representatives of any Alliance conference and bowl representatives or between representatives of a television network and bowl representatives suggesting that Brigham Young or any other eligible team not be selected.

Question 11. What role do the networks have, either formally or informally, in the selection of teams?

Answer 11. I am not aware of the terms of the contractual arrangements between the three Alliance bowls and their telecasting networks. Those contracts are negotiated solely between each bowl and its television network. I do know that bowl selection committees will often consult informally with the television networks telecasting their games as part of the process of making their team selections, but I do not know what effect those consultations might have on the selection made by any particular bowl.

Question 12. How were the Orange, Sugar, and Fiesta bowls selected to be in the Alliance.

Answer 12. In 1994, the Alliance sent out a request for proposal (RFP) to all NCAA-certified bowl games except the Rose Bowl, which was contractually committed to host the Big Ten and Pac-10 champions well into the future and had no open slots. The RFP sought bids on the Alliance arrangement as currently structured. Nine bowls submitted responses, which were evaluated by the Alliance commissioners and representatives of Notre Dame. Ultimately, we accepted the proposals of the Fiesta, Orange and Sugar Bowls.

Question 13. Was their [sic] a bid process? If so, did the Alliance bowls go to the highest bidders?

Answer 13. The bid process is described in my response to Question No. 12. I do not recall all of the nine proposals we received in great detail, but determining the three "highest bidders" would be difficult. Some bowls offered higher cash payments to the participating teams. Others offered slightly lower financial payouts but provided in-kind benefits, such as hotel rooms for the participating teams and reduced air fares or travel allowances. In terms of the purely financial payments to the participating teams, the bowls selected were not the three who offered the highest financial payouts, although my recollection is that the Fiesta Bowl's financial payout was higher than that submitted by any other bowl. The financial payouts of the Sugar Bowl and Orange Bowl may not have been quite as high as one of the other bowls not selected, but the differences, as I recall, were not substantial.

In selecting the three bowls, the Alliance did not look solely at financial consideration, although that was certainly an important factor. In addition to financial payments, we looked at the history of the bowls submitting proposals, how they had operated over the years, and whether their games provided an enjoyable experience for the players, coaches and fans of the participating institutions. We looked at the geographic locations of the various bowl games submitting proposals. The Alliance was concerned that the participating bowls be geographically dispersed so that they would be accessible to fans from every area of the country. We looked at stadium facilities, parking at the game venue, transportation to, from, and in the host city, and the availability of hotels for the teams, conferences, fans, and media. We looked at the ancillary events sponsored by the various bowls and at community support, and we looked at things as mundane as practice facilities, locker rooms and meeting areas available to the participating teams. All of these matters were important in the decision, and we evaluated them carefully. The decision was not easy, and we knew that we could not accommodate every one of the fine bowls that had submitted a proposal. In the end, when weighing those factors and based on the proposals submitted, we believed that the Fiesta, Orange, and Sugar Bowls had the best total packages, and we chose to enter into a contract with them.

Question 14. I understand from your brief that the new SuperAlliance bowls have not been selected. What is the method of selection for the new bowls? Will all bowls have a chance to bid? Will the SuperAlliance designation go to the highest bidder? The Holiday Bowl is here with us to testify today If the Holiday Bowl is the highest bidder, will it be one of the SuperAlliance bowls?

Answer 14. The Rose Bowl will be integrated into the new Alliance arrangement beginning after the 1998 regular season. The other three slots in the arrangement have yet to be determined.

Under the current Alliance agreement, the Fiesta, Orange, and Sugar Bowls have a right of first negotiation on any new Alliance arrangement for a period of sixty days. We have had to extend that period on a couple of occasions to permit us to prepare for these hearings and to evaluate the proposals submitted to us by those three bowls. We are in the midst of negotiating with those bowls now, and we intend to negotiate with them in good faith and in accordance with the terms of our contract.

If, for some reason, we are unable to reach agreement with one or more of those bowls, then we would expect to have a bidding process for the number of open bowl slots and to invite all certified NCAA bowl games to bid on those slots, including those bowls currently participating in the Alliance arrangement.

Should that occur, I cannot say whether any particular bowl will be selected if it is the "high bidder." As I mentioned in response to Question No. 13, financial consideration is an important factor, but it is not the sole factor, and we would have to evaluate all of the bids on the basis of the factors I described above and other matters that might be important with respect to any particular bowl.

Question 15. The Alliance justifies its championship structure in large part based on which schools and conferences have a winning tradition or legacy of bowl victories. This type of reasoning seems to me to be at the heart of the Alliance's antitrust violations. Doesn't it strike you as patently unfair to reward a school in 1997 or its accomplishments in the 1980s? I think it is completely irrelevant what a team like the University of Louisville or a team like the University of Alabama did in previous years. In fact, in the Fiesta Bowl following the 1990 season—before the Alliance came onto the scene—U of L played Alabama on New Year's Day. U of L had never been to a New Year's Day bowl, while Alabama had won more bowl games than any team in the country. U of L won that game 34–7. Don't you think that the Alliance's reliance on past performance perpetuates the current power structure and ensures that the strong get stronger, while the rest get weaker?

Answer 15. The question misperceives the importance of history in the Alliance structure. I attempted to place the historical achievements of the Alliance conferences and its relationship to the goal of creating a national championship game in context in my response to Question No. 8. But perhaps there is a different way of explaining the Alliance structure that will further illuminate the point.

As I mentioned in response to Question No. 8, each of the Alliance conferences with a guaranteed slot in the arrangement gave up a valuable existing bowl relationship or turned down such a relationship to make the Alliance possible. Now, one must ask why such bowl relationships were available to these conferences in the first place. The answer, I respectfully suggest, is that their records of historical achievement made them the most attractive conferences to those particular bowls. Further, to ignore the historical relationships between certain conferences and bowls and the investments made by those conferences in those relationships is to ignore the business realities underlying the Alliance arrangement. The most obvious example is the relationships among the Big Ten, Pac-10, and Rose Bowl. The Big Ten and Pac-10 champions have played exclusively in the Rose Bowl for 50 years. The Rose Bowl is the oldest and generally viewed as the most prestigious of all of the bowl games, but the Rose Bowl did not build such a venerable tradition alone. It built that tradition largely with the assistance and investment of the Big Ten and Pac-10. Those conferences made substantial contributions to that game and in return received the opportunity to play in that game. It is simply not reasonable, from any perspective, be it business or athletic, to expect that those conferences will give up their guaranteed slots in that bowl game and seek absolutely nothing in return. There is absolutely no incentive for them to do so, and I suggest that there is no incentive for the SEC to give up its Sugar Bowl relationship, the Big Eight/Big 12 to give up its Orange Bowl relationship, or the ACC and Big East to forego guaranteed bowl relationships, such as that offered by the Blockbuster Bowl, if they get absolutely no guarantee in return.

The Bowl Alliance and the predecessor Coalition were not built on virgin ground and, to create the benefits from the arrangements, their architects had to address certain established relationships and to persuade the conferences to try something different.

As I mentioned in response to Question No. 8, those conferences came together to develop a mechanism for creating a national championship game. Before 1992, such games occurred solely by happenstance; there was absolutely no mechanism which created the substantial likelihood of such a game, as exists in the current Alliance arrangement, and nothing remotely approaching the certainty of such a game that will exist when the new Alliance arrangement begins play after the 1998 season. When attempting to reach the goal of a national championship game within the existing bowl system, there are two questions that have to be asked: (1) who is likely to participate in such a game; and (2) how can be we get those teams to participate in an arrangement designed to achieve that result. As I mentioned in my response to Question No. 8, the only logical and rational way to answer the first question is to look at who has won the national championship in the past and who has challenged for the national championship in the past. The answer to that question is, overwhelmingly, the teams currently in the Alliance conferences and Notre Dame. The differences in the levels of achievement between those teams and other Division I–A teams is, frankly, enormous. Recognition of these facts does not reward any team for its past performance but is simply a means of defining the scope of the issue to be resolved.

Once the scope of the issue is determined, we had to move to the more important but more difficult task, which is embodied in the second question: how to get those teams to participate. The only way to do that was to provide those conferences who are making available the teams most likely to play in the national championship game—precisely those with affiliation agreements or the ability to obtain affiliation agreements—something to induce them to give up their existing bowl relationships in order to make the national championship game possible.

Nothing about this approach is unusual or extraordinary. In the business world, for example, when a group of companies forms a joint venture, it is not unusual, and certainly not anticompetitive, for the venture to reward those parties who make the biggest investments in it and bring the most to it. This is particularly so when the venture opens its doors to participation by others who were not responsible for its creation and who do not make proportionally the same investments in it. That is the situation with the Alliance. The conferences with guaranteed slots were part of the creation of the Alliance and have made the most significant contributions to it. Each "invests" in the Alliance arrangement by making its teams (again, the teams most likely to play in a national championship game) available and by giving up a guaranteed, historical and valuable relationship with a particular bowl or foregoing such a relationship when offered. No other conference or independent can make that claim. Thus, it is eminently fair that these conferences receive compensation for the substantial contributions they have made to the arrangement.

For that reason, it is not irrelevant what the University of Louisville or Alabama or any other institution did in previous years. I respectfully suggest that, if the University of Louisville had a record of historical achievement comparable to that of the University of Alabama or was part of a conference that had such a record of achievement, then that it would have been Louisville and its conference members that attracted the attention of particular bowl games under the prior bowl system, Louisville and its conference members that would have had a longstanding relationship with a bowl game, and Louisville and its conference members that would have had to give up that relationship in order to make a national championship game possible. If that had been the case and Louisville and its conference members had been called upon to make that sacrifice or investment, they would have expected something in return—a guaranteed slot in the new arrangement—and rightly so.

As for the allegation that "the Alliance's reliance on past performance perpetuates the current power structure and ensures that the strong get stronger, while the rest get weaker," I think three observations are crucial.

First, the question itself implicitly admits that the teams in the Alliance conferences are stronger than teams in the non-Alliance conferences. Thus, it seems to validate the Alliance's position that historical records are important in determining which teams are likely to participate in the national championship game.

Second, although I believe that a conference's bowl arrangements play a very small role in recruiting football players and that the success of a program depends more on the quality of coaching players receive once they are at an institution rather than the raw talent that they bring to the program, I will, for the sake of argument, set aside those beliefs for the purposes of this question. Accepting the premises underlying the question, the Alliance arrangement does not harm the recruiting position of the non-Alliance conferences but improves it over the prior bowl system. Let's look at a typical recruiting situation. Before the formation of the Alliance, a coach at an institution in the Western Athletic Conference could only promise a recruit the opportunity to play in the Holiday Bowl, even if the team won the WAC championship and was ranked number one at the end of the regular season. That is exactly what happened to Brigham Young in 1984, before the Alliance and the Coalition. Meanwhile, a coach at a Big Ten or Pac-10 institution could promise that same recruit an opportunity to play in the Rose Bowl if the team won a conference championship. A coach at an institution in my conference could promise that recruit an opportunity to play in the Sugar Bowl if the team won the conference championship, and a coach at a Big Eight university could promise a recruit a trip to Miami to play in the Orange Bowl if the team won the conference championship. Those Big Ten, SEC, and Big Eight coaches could make their promises solely on the basis of individually negotiated contracts between each of those conferences and a bowl.

Today, under the Alliance arrangement, what can a coach in the WAC tell a recruit about bowl games? He can promise the recruit: (1) a guaranteed opportunity to play in a national championship game in one of the Alliance bowls if the team is ranked number one or number two; (2) an opportunity to play in one of the Alliance bowls if selected as an at-large team; (3) because the formation of the Alliance arrangement opened a slot in the Cotton Bowl, an opportunity to play in that game if the team wins the WAC championship and is selected by the Cotton Bowl; or (4) an opportunity to play in the Holiday Bowl if the team wins the WAC championship and is not selected by an Alliance bowl or the Cotton Bowl.

The coaches in my conference and the other Alliance conferences can offer a recruit a guaranteed opportunity to play in a national championship game in one of the Alliance bowls if the team is ranked number one or number two, which is precisely the same opportunity that the coach in the WAC (or Conference USA or any independent) can offer his recruits. Second, the coach in one of the Alliance conferences can offer a guaranteed slot in one of the Alliance bowls if the team wins a conference championship. In other words, the coach simply changes his nomenclature. Instead of telling a recruit that he will have a guaranteed opportunity to play in the "Sugar Bowl" or "Orange Bowl" if the team wins a conference championship, he now simply tells the recruit that he will play in an "Alliance bowl" if the team wins a conference championship. There is absolutely no difference, however, in the reward. Thus, from a recruiting standpoint, the position of the non-Alliance conferences is improved and the position of the Alliance conferences is the same when compared to the bowl system existing before the Alliance arrangement.

Brigham Young's own success during the 1996 season refutes any notion that the Coalition or the Alliance has impeded the ability of any team outside the Alliance conferences to improve its program or recruit quality athletes. Under NCAA rules, a football player must complete his four years of athletic eligibility within five calendar years of enrolling in an institution. With the possible exception of those student-athletes who may have been on an official church mission, the very fine senior class on the Brigham Young football team this past year was recruited and enrolled in the institution no earlier than the fall of 1992, the very first year of the Bowl Coalition. The remaining student-athletes were recruited in later years. Thus, the players on the 1996 Brigham Young team, who won 14 games, were ranked number five in the nation, and have been the focus of much of the attention of this hearing were recruited and chose to go to Brigham Young during the period of time when the Coalition and Alliance were in place.

Wyoming's achievements in 1996 may support my position in an even more compelling fashion. Until this past season, Wyoming had not produced a football team ranked in the final Associated Press poll since 1967, a span of thirty years. As with the Brigham Young team, the senior class on this year's Wyoming football team was recruited and enrolled in the institution no earlier than the fall of 1992, the first season of the Coalition. Therefore, if the Coalition and Alliance arrangements were stifling the building of programs in non-Alliance conferences, one certainly would not expect to see Wyoming produce a ranked team or a team that won ten games.

I do not know why Wyoming did not receive an invitation to play in a bowl game. The WAC has an affiliation agreement with the Copper Bowl in Tucson for the selection of a runner-up team from the conference. Instead of taking a 10-2 Wyoming team, the Copper Bowl chose to take an unranked Utah team. The Copper Bowl is not part of the Alliance and did not submit a bid to join the arrangement. I have no idea why it made the decision it did. I can say this, however, with respect to the Alliance bowls: Using the poll rankings as the sole basis for selecting teams, as the critics of the Alliance have done, every team that played in an Alliance bowl in 1996 was ranked ahead of Wyoming at the conclusion of the regular season and on the date that the Alliance bowls made their selections. Even under their own criteria, the critics cannot criticize the Alliance bowls for not choosing Wyoming last year.

Finally, it has been suggested that the best athletes will not choose to attend institutions other than Notre Dame or those in the Alliance conferences because of the possibility that they will not get exposure in major bowl games and thus be overlooked by National Football League teams. The historical record does not support that position. Neither Steve Young nor Jim McMahon, both of whom played quarterback at Brigham Young, ever played in one of the Alliance bowls, and their ability to have successful NFL careers was not harmed in any way, to say the least. Walter Payton, the NFL's all-time leading rusher, and Jerry Rice, the NFL's all-time leading pass receiver, attended Jackson State and Mississippi Valley State respectively. Neither ever played in any bowl game. Moreover, for a number of years, Grambling University, which does not even compete in Division I–A football, turned out as many professional players as many of the traditionally powerful Division I–A programs. Professional teams, with their armies of scouts, their combines, and workout programs, have sophisticated scouting capabilities and find talent wherever it exists. Whether or not a player plays in an Alliance bowl will not affect his chances of being drafted or having a successful career in professional football.

Simply stated, the facts belie the notion that the Coalition and Alliance arrangements have done anything to harm the ability of non-Alliance teams to recruit good athletes and build winning programs or perpetuate the strength of certain conferences and the weakness of other conferences.

Question 16. The Alliance spends a lot of time arguing that its horizontal agreements allow college football to compete more effectively with other sporting events, like the NFL. Don't you think that an open system—that allows merit-based competition and allows both Davids and Goliaths to play each other—would be more exciting for fans, and thus, be more competitive with some potential NFL New Year's day game? For example, you certainly don't see the NBA putting a great deal of effort into broadcasting games opposite March Madness.

Answer 16. The question is based some factual errors. First, our submission to the Department of Justice did note that the Alliance agreement positions the bowl games to compete more effectively with other sporting events. This, of course, is a benefit of the Alliance arrangement, but not the primary purpose or benefit of the arrangement and not one that we have spent "a lot of time" advancing. Further, the question asserts that the NBA does not put "a great deal of effort into broadcasting games opposite March Madness." That is not correct. Since it moved its telecasts to NBC several years ago, the NBA has telecast games on Sunday opposite games played in the NCAA basketball tournament.

On the substantive aspects of the question, I am not certain how the Alliance arrangement could be more "open" or "merit-based" than it already is. I have already explained at some length why the guaranteed slots are appropriate, merit-based, and are not anticompetitive in my responses to Question No. 8 and Question No. 15. The at-large slots are open and filled by the bowls in the exercise of their own discretion. That is no different from the days before the Coalition or Alliance.

As for the alleged pairings between David and Goliath, I am not certain how anyone can argue that a "David" did not participate in an Alliance bowl last year. Texas, which started the season slowly, rebounded late in the year, winning several games in a row. It then won the Big 12 championship by knocking off heavily favored Nebraska, the two-time defending national champion and number three ranked team, in the Big 12 championship game. This was a startling upset, perhaps the biggest upset of the entire college season. I simply do not see how the Alliance can be criticized for not giving "David" a chance to play in an Alliance bowl.

Finally, despite the talk of "open" systems and "merit-based" competition, no one critical of the Alliance has put before this subcommittee any alternative system that would be more "open" and more "merit-based" than the Alliance. Questioners and some panelists have talked about a playoff system in the abstract, but absolutely no one has suggested how such a "playoff" would be structured. In his written statement, Professor Roberts suggested that no teams or conferences be allowed to enter into any individual arrangements with any bowl games, but, as I noted in my supplemental written statement, that suggestion would require far greater restrictions on individual conferences and institutions and more stringent enforcement mechanisms by the NCAA than anything previously put in place. If adopted, his proposal would lead to a return to the days before the Coalition and Alliance, when teams and bowls made informal commitments to one another well before the season ended and then formalized those arrangements shortly after the NCAA-sanctioned date for extension of bowl invitations. This is certainly not more "open" or more "merit-based" than the Alliance, which results in bowls making selection of teams after the season and based on a full record.

I respectfully suggest that the critics have failed to come up with a superior alternative because none exists. Whatever alternative system is devised, including a playoff system, would necessarily have selection criteria. Whatever the criteria and regardless of who does the selecting, there will always be criticism. As I have previously noted, criticism of the selection criteria exists in the NCAA basketball tournament, where there is both a playoff and a 64-team field. For the reasons stated in my response to Question No. 1, no football playoff could possibly have that many teams. Any football playoff would likely have, at most, eight teams. That is not enough slots to guarantee the champions of each of the Division I–A conferences a spot in the playoffs, much less leave room for independent teams, such as Notre Dame, that may be ranked number one at the end of the regular season, or highly ranked teams that do not happen to win their conference championships, such as Tennessee from my conference, which ended the 1995 season ranked number three. Accordingly, as with the basketball tournament, some committee will have to select teams to participate in the playoff This raises a number of questions. What persons will sit on the selection committee? What criteria will that committee use? Is it "fair" to look solely at rankings? Suppose that one team racked up a number of victories against very weak opposition while another team had a slightly less impressive record but played a much tougher schedule and had wins against some very strong teams. Which of those two teams is "more deserving?" That question cannot be answered definitively because it is subjective. If the team with a fine record against weak opposition is taken, then the team passed over will have little incentive to play as many tough games in the future. That will mean lower quality regular-season football, which does not redound to the advantage of college football fans. On the other hand, if the team with the impressive record is not chosen, there is a risk that such a team will claim that the system does not reward achievement, that it has been "excluded" from the playoff, and that the system is "unfair" or even "anticompetitive."

The point remains that, despite the criticism directed against the Alliance, no critic has proposed any alternative that works within the confines of the existing bowl system or current NCAA rules and achieves the exact same benefits—namely, a national championship game and other high quality bowl games. The Alliance has been beneficial for all of college football, and I am certain that it will continue to provide benefits into the future.

RESPONSES OF ROY F. KRAMER TO QUESTIONS FROM SENATOR STROM THURMOND

Question 1. It has been suggested that particular conference champions should not be given a guaranteed slot in one of the Alliance bowls and that instead all teams should compete for all six slots. Mr. Kramer, would the Alliance continue to exist if there were no guaranteed slots?

Answer 1. It As I stated in my responses to Question No. 8 and Question No. 15 posed by Senator McConnell, the Alliance would not exist in the absence of the guaranteed slots. The conferences that have guaranteed slots in the Alliance arrangement would not have given up their guaranteed existing bowl affiliation arrangements to make the Alliance possible unless they received comparable guarantees from the Alliance bowls.

Question 2. Mr. Kramer, it is my understanding that a particular bowl makes its own decision regarding which team it will select for an open slot. When the bowls consider selecting teams that are ranked below number one or number two, how important are rankings compared to other factors that they consider.

Answer 2. I cannot speak for any bowl about any particular selection decision, and the Alliance is not involved in the selection of at-large teams by the bowls. Generally speaking, however, for those Alliance bowl games that are not hosting the national championship game, rankings will be important but not the sole or necessarily the overriding factor in their decisions.

Clearly, rankings are important because all bowls would like highly ranked teams. But because the existence of a national championship game focuses much media attention and fan interest on a single bowl game, for those games that are not hosting the top two teams, it is important that they retain some flexibility to put together those matchups that they believe will sell the most tickets and have the greatest appeal to a broad group of fans and television viewers. That means that those bowls will often consider factors such as the geographic locations of particular institutions and favor a team that it believes will be able to sell a number of tickets to its fans, alumni, and institutional supporters. It may choose a team that has appeared in its game on previous occasions and has attracted great fan interest. It may choose a team it believes will draw a high television rating. It may choose a team because of its consistently high level of performance over a period of years, or it may choose a team like Notre Dame, which also has an ardent national following and generally satisfies a number of these criteria.

How any bowl may balance and weigh all of these factors in a particular situation I do not know. Nevertheless, these other factors will often be as important as the team ranking, although I do not want to suggest that rankings are ignored or are unimportant. They are simply one factor among many that will be considered.

Question 3. Mr. Kramer, you state in your prepared testimony that the College Bowl Alliance arrangement has strengthened the bowl system. How has it strengthened bowls other than the three bowls that constitute the Bowl Alliance?

Answer 3. First and foremost, I believe that the bowl system as a whole and particularly the bowls other than three Alliance bowls are far better off than if a playoff system were implemented, as some witnesses favor. It is noteworthy, I believe, that Mr. Circuit, the Holiday Bowl representative, was opposed to a playoff. As I noted in my response to Question No. 1 from Senator McConnell, it is my belief that implementation of a playoff would inevitably reduce the number of bowl games. The television networks, sponsors, advertisers, and media would focus virtually all of the attention on the playoffs, and, I believe, over time, financial support would erode for the traditional bowl games. While some of the older and more established bowls might survive, they would certainly not be the same, and many of the smaller games would simply not be able to make it. This would inevitably lead to a reduction in the number and quality of postseason opportunities available to student-athletes and deprive fans at many institutions of the opportunity to enjoy a postseason experience with their teams. The Bowl Alliance avoids this detrimental effect on the bowls by creating the same benefit as a playoff system—determining a national champion on the field—while doing so through the traditional bowl system, which has been good for college football over the years.

Second, the Bowl Alliance is more structured than any bowl system that has proceeded it. This has allowed other bowls to make firm agreements with runner-up teams in the various conferences, both Alliance and non-Alliance. The bowls outside the Alliance benefit from this predictability.

Finally, the identity of the Alliance bowls is not fixed forever. It is possible that, in the future, another bowl might displace an existing Alliance bowl or that the Alliance might be expanded, as it has already done with the inclusion of the Rose Bowl beginning after the 1998 season. The basic point is that the Bowl Alliance is an evolving system, which will always represent a transient compromise between competing interests.

RESPONSES OF GARY R. ROBERTS TO QUESTIONS FROM SENATOR MITCH MCCONNELL

GARY R. ROBERTS,
PROFESSOR OF LAW, DIRECTOR, SPORTS LAW PROGRAM,
New Orleans, LA, July 2, 1997.

PETER LEVITAS,
Counsel, Antitrust Subcommittee,
Committee on the Judiciary,
U.S. Senate, Washington, DC

RE: FOLLOW-UP QUESTIONS TO COLLEGE BOWL ALLIANCE HEARING

DEAR MR. LEVITAS: This letter responds to your June 17 letter asking several follow-up questions from Senator McConnell. I apologize for taking so long to get the responses to you, but I have been out of my office for an extended period, and I have only now returned to find your letter. I hope the following information is not too untimely to be of use to you.

Below I have answered each of Senator McConnell's questions. I have not set forth the full text of each question, but I have numbered the answers to correspond to the question, and I have indicated the general topic as indicated above each question asked. I also realize that since the hearing and receiving these questions, the Alliance has reached an accommodation with the Western Athletic Conference (the WAC) and Conference USA (CUSA) to include them in the scheme on a very limited basis. While this new arrangement mitigates to a slight degree the pernicious effect of the Alliance on the college football industry, and thus its anticompetitive effects, it in no way changes my conclusions. My answers below take into account this new arrangement.

QUESTION 1.—HIGH COSTS OF LITIGATION

I hesitate to hazard a guess as to what the parties' costs would be in a full blown rule of reason litigation over the Bowl Alliance. In such cases, the extent of discovery, the number of pre-trial motions, and the length of trial could vary enormously, depending on the strategies, tactics, and issues each side would choose to raise and pursue as well as the skill and patience of the judge. However, in order to take the case through to a jury verdict, as well as through the prolonged appeals that inevitably follow, "a few million dollars" of expenses for each side is certain. I also believe that such a case would take no less than three and possibly ten or more years to run its course, depending on if counsel are reasonable and cooperative during discovery and whether there are any mistrials or remands for retrial.

QUESTION 2.—LESS RESTRICTIVE ALTERNATIVES

As I suggested in my written and oral testimony, there are many variations of less restrictive alternatives, but the most obvious is to have a single championship game between the two highest ranked teams (preferably, but not necessarily, run by the NCAA), with the proceeds from such game being shared in some equitable manner among all of the 113 members of Division I–A. The historic bowl system would remain in place, and all teams other than the top two would be eligible to be selected by and participate in one of the bowls. This would produce the national championship game, which is the sole procompetitive benefit of the Bowl Alliance, without the substantial anticompetitive effect of relegating approximately 50 non-Alliance Division I–A schools to permanent second-tier status or driving them out of football altogether (which, in my judgment, will occur even under the new arrangement the Alliance has reached with the WAC and CUSA). It would also preserve the pre-Alliance bowl system whereby each bowl would compete for a quality game each year without a few of them being predetermined as "major bowls" and the rest relegated to permanent second-tier status or driven out of business.

As for whether an NCAA sponsored championship game would necessarily result in the revenues being shared by all 113 Division I–A schools, the answer is that the revenues would be shared in whatever manner the new Division I NCAA government structure determined. Since the six Alliance conferences comprise a majority of the Division I–A schools and conferences, they would probably still insist on and get a revenue distribution formula. under which they would receive the lion's share of the revenues generated. Whether the WAC, Conference USA, and the other conferences and independents could politically manage to get a sufficient share of the revenues to remain viable competitors in Division I–A is not certain.

QUESTION 3.—ALLIANCE RELIANCE ON HISTORY

As your question suggests, antitrust law does not allow a group of industry members to create a scheme under which only they can be viable competitors in the future and legally justify that scheme on the grounds that historically they have had the largest market shares or the better product. A basic principle underlying microeconomic theory, upon which much of antitrust law is based, is that markets are fluid, not static, based upon evolving consumer preferences, and that consumers benefit when the market allows them to turn to newcomers who outperform the historical industry leaders. Allowing a group of historical industry leaders to conspire to erect barriers to new entry or to force the industry's smaller producers into permanent fringe status or out of business altogether clearly contravenes antitrust policy because it eliminates some consumer choices, lowers the industry leaders' economic incentives to be innovative and optimally efficient, and promotes complacency, arrogance, inefficiency and stagnation. The ebbs and flows that have occurred in so many other industries, most recently in the high technology area, demonstrate the benefits to consumers from not allowing the IBMs and General Motors of the world to block meaningful competition from historically small or nonexistent firms. If a scheme like the Bowl Alliance had been implemented 70 years ago, the University of Chicago would still be a football powerhouse and the University of Miami would have never had a winning season. Without realizing it, the Alliance has weakened its antitrust position with its "we have historically been better" defense.

QUESTION 4.—NCAA'S "HANDS-OFF" APPROACH

This is a "batting practice" question, but the obvious answer is that I cannot think of a legitimate reason why the NCAA should not get involved in running the Division I–A postseason if the alternative is to have the Bowl Alliance. Of course, there are concerns about the academic and social welfare of the student-athletes that would have to be addressed, and that should play a prominent role in NCAA decisions about how to structure and run the football postseason. Such concerns, however, have not prevented the NCAA from running postseason championships in every other sport it sponsors, including lengthy, academically compromising tournaments in football in every other Division except I–A and in basketball. I realize that there have been legitimate concerns that caused many to oppose NCAA involvement in the Division I–A postseason in the past. However, given that today the Bowl Alliance is apparently the inevitable alternative, the NCAA's continued "hands-off" approach to the postseason can not be explained or justified by anything other than the political reality that the Alliance members control a majority of the Division I–A governance structure.

QUESTION 5.—INJURY TO CONSUMERS

I have already explained on pages 5 through 15 of my written testimony how and why the Bowl Alliance creates substantial anticompetitive effects, which is to say causes injury to consumer welfare. To summarize, consumers are injured in two general ways. First, the Alliance creates tremendous financial and prestige advantages to the 63 Alliance member schools and the four selected Alliance bowls, advantages that will have the effect of permanently relegating the 50 excluded schools and roughly 14 excluded bowls either to second tier status or driving them out of the business altogether. This in turn reduces both the quality and quantity of Division I–A football in the short term; and by lowering the threat of new entry the Alliance causes complacency, stultification, and less innovation in the long term (see the answer to question 3, above). (While these effects may be mitigated to a slight degree by the new arrangement involving the WAC and CUSA, they are still significant and the outcome is the same.)

Second, by giving a subgroup of Division I–A members collective control over the championship game, the Alliance creates a cartel able to charge monopoly prices for that game in a variety of direct and indirect ways. This creates a wealth transfer that the majority of antitrust courts and scholars still regard as offensive to antitrust law and policy. In short, because of the Alliance, consumers of Division I–A football will have fewer Division I–A games from which to choose, the games they still have will include several of distinctly lower quality, there will be fewer and more low quality postseason bowl games available, and ticket buyers, sponsors, and television networks will be directly and indirectly charged monopoly prices for the postseason Alliance bowls. These are all clearly anticompetitive effects that would have to be considered in a rule of reason analysis.

QUESTION 6.—ALLIANCE HAS CREATED A MONOPOLY

This is a very technical and conceptually complex question, which I tried to address superficially on page 14 of my written testimony. It is true that by creating a national championship game, the Alliance has produced a product that is of greater utility, and thus greater value, to consumers. However, the Alliance's argument that this means its dramatically increased prices for this game (as well as the other three Alliance bowl games which do not have any increased value to consumers) are not monopoly prices reflects a fundamental misunderstanding of monopoly pricing.

The test of whether the price charged for a product is a near-competitive or instead a monopoly price does not depend solely on its utility or value to consumers, but rather on whether the price the seller is able to extract from consumers is close to. or substantially above the seller's marginal cost to produce the product at the relevant level of output. Antitrust law recognizes that producers must recoup their actual costs of production plus a reasonable rate of return on investment, but antitrust policy reflects the value judgment that any utility or value the product creates for consumers above these "costs" (i.e., the product's "consumer surplus") should go to the consumers, not the producers. If as the utility or value of a product to consumers goes up, the producer can raise its price to expropriate for itself all of the economic benefit from the increased value (i.e., the new consumer surplus), it has monopoly power and is charging a monopoly price.

Applying the traditional microeconomic theory that economists use for the "widget" industry to sports is almost impossible because of the unusual nature of the product and the unique ways in which it is marketed and sold. Identifying average or marginal costs and measuring units of output for Division I–A football is a mind-boggling conceptual task. But to make it simple here, the fact that the Alliance can produce a highly valued championship game does not mean that dramatically increasing its prices for that game (and the other three Alliance bowls of no higher value) is justified under antitrust theory unless it can demonstrate that the costs to produce these games also increase dramatically. Because it seems intuitively obvious that the cost to produce these games is no higher today than the cost to produce bowl games in the past, the fact that the Alliance can dramatically increase the prices for its four bowl games proves that it has monopoly power because it is able to reap most or all of the increased consumer surplus for itself rather than have the consumers enjoy the benefits of a more valuable product at the same price (which they should be able to since costs did not increase).

On its face the Alliance has complete control over a sports entertainment product that its creators tout as being unique and without substitute in many consumers' minds. For the same men to defend the Alliance because it creates this unique and unparalleled product over which they have total control, and then to argue that they do not charge a monopoly price for it, is irrational. Either these men think we are fools to believe that they are voluntarily charging less than they could just to be nice to consumers, or they are fools for not charging what their market power allows. I don't think there is any doubt as to which of these two alternatives is the case. That the prices the Alliance is charging for the tickets, television rights, and sponsorship rights for its four designated bowls have increased by orders of magnitude over the past three years, while the costs of production have not increase by any discernible amount, pretty clearly indicates that the Alliance has the market power to charge monopoly prices and it is doing it. For its leaders to deny it is just silly.

I hope that this adequately responds to Senator McConnell's questions. If there is anything further I can do to be of assistance, do not hesitate to ask.

Sincerely,

GARY R. ROBERTS,
Professor of Law.

ADDITIONAL SUBMISSIONS TO THE RECORD

PREPARED STATEMENT OF STEVE EHRHART ON BEHALF OF ST. JUDE LIBERTY BOWL

My name is Steve Ehrhart and I appreciate the opportunity to speak to you today concerning the future of the bowl alliance and the bowl system itself. I am currently the executive director of the St. Jude Liberty Bowl which is in its 39th year and will be played in Memphis, Tennessee on December 31, 1997. My point of view however, is also based on my experiences as a young assistant football coach 25 years ago at the University of Colorado, where I participated first hand in the bowl experience from the side of a competing university.

It is important for the committee to have information about the tradition and history of college football bowl games which have given opportunities to literally millions of people including student-athletes, coaches, faculty, staff, fans, and alumni. For nearly the entire 20th Century one of the great celebrations of human activity in our country has been the unique marriage of higher education and human competition exemplified by the traditional Holiday Football Bowl Classics. The College Football Bowls have created great personal experiences for literally millions of participants, as well as giving great Universities the opportunity to build alumni support, donations, increased applications, public image and awareness.

Just two weeks ago, the NCAA approved two new bowls so that now 19 Bowl games give the opportunity to thousands of young people and millions of viewers both in person and via television to celebrate their achievement (The list of Bowls is set forth in Appendix A)

What is important for the committee to realize is that from the viewpoint of the participants, competing in any bowl game whether it be the Copper Bowl in Tucson, Arizona, the Liberty Bowl in Memphis, Tennessee, or the Orange Bowl in Miami, Florida provides the same quality experience.

The NCAA very carefully controls all the Bowl games.

Each Bowl provides:

(1) the same gifts to players and staff (NCAA limit of $300 per person is the same in every bowl)
(2) creates a rewarding holiday week atmosphere
(3) events and tours for players, family, and friends

Thus the student athlete has basically the same experience. playing in a nationally televised bowl game during a week in a new community, receiving the same kinds of gifts The key difference between the proposed Alliance Bowls and the other Bowls is basically a huge amount of money that the student-athletes never see. The extra money does not impact their individual bowl experience.

In order to illustrate the impact of a Bowl experience, I would like to share a couple of examples which provided the participants with a moving, lifelong, rewarding experience. Three years ago the St. Jude Liberty Bowl hosted the University of Illinois, an outstanding representative from the BIG 10 Conference. The official traveling party consisted of approximately 300 and included many young people. During the week prior to the game, they visited the Civil Rights Museum in Memphis, Tennessee. These young people stated that witnessing first hand the reality of the Civil Rights movement and the impact of Martin Luther King was one of the most moving and educational experiences of their lives. Spurred by their reaction, we surveyed the students and found that over half of them had never had the opportunity to travel away from their home or university setting for more than 48 hours. Traveling to the Liberty Bowl was their first in-depth experience in any other environment. For many that are not blessed financially I suspect the trip will remain one of the most important of their lives.

The tradition of the St. Jude Liberty Bowl also entails a visit to the St. Jude Children's Research Hospital. This Memphis hospital is a world leader in the research and treatment of catastrophic diseases afflicting children and is the largest childhood cancer research center in America. Every year, everyone from the student-athletes to the university president visit the hospital and share a tremendously moving, enlightening, experience.

The Bowls also collectively deliver a great deal of money to the universities. Last year, the bowl returns were close to $100 million dollars in aggregate. Certainly these dollars contribute significantly to higher education.

Bowl communities also benefit substantially from the economic activity surrounding the event. With nearly one million people per year attending the Bowl game, the visiting teams, student bodies, faculty, bands, fans, and alumni generate a great deal of revenue and positive exposure for the host community.

Upon multiplying the unique features and attractions each Bowl has to offer, you can see how these events impact the lives of many individuals, particularly our student-athletes. It is vital that we continue to foster a system that is open and does not limit opportunities to only the strongest and richest universities playing in a small number of lucrative bowls. It would be a grave mistake to allow a system to restrict the number of universities that are able to capitalize on such a great experience at whatever level of Bowl.

Allowing the concentration of money and control in too few hands would defeat our goal of trying to provide the widest range of opportunities. You as senators have seen in many kinds of businesses the imbalance of money and power that occurs when the concentration of economic control becomes focused in a limited group. We must guarantee a landscape of economic opportunities for a multitude of Bowls to survive and prosper.

Some analysts have predicted that if too much money is concentrated in a very few bowls that the resultant economic system would force the smaller bowls out of business. This would be a tragic result to rob the student-athletes and constituents from the non-power house schools of their opportunity to enjoy their own bowl experiences.

I thank the committee for conducting these hearings and focusing attention on a area that has meant so much to so many during the 20th Century and with thoughtful stewardship can continue to provide outstanding opportunity for the greatest number of our youth in years to come.

APPENDIX A

1997–98 Bowl Directory
Orange—Miami, Florida
Sugar—New Orleans, Louisiana
Fiesta—Tempe, Arizona
Rose—Pasadena, California
Cotton—Dallas, Texas
Citrus—Orlando, Florida
Gator—Jacksonville, Florida
Outback—Tampa, Florida
Peach—Atlanta, Georgia
Sun—El Paso, Texas
St. Jude Liberty—Memphis, Tennessee
Alamo—San Antonio, Texas
Holiday—San Diego, California
Carquest—Miami, Florida
Copper—Tucson, Arizona
Motor City—Pontiac, Michigan
Aloha—Honolulu, Hawaii
Independence—Shreveport, Louisiana
Las Vegas—Las Vegas, Nevada

Prepared Statement of Roy F. Kramer, Commissioner of the Southeastern Conference

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to supplement my statement before the Subcommittee. For the record, I would like to submit the attached comments on the antitrust implications of the Alliance arrangement, which we have asked counsel for the Alliance members to prepare in response to the statement submitted by Professor Gary Roberts of Tulane University Law School. I adopt and incorporate these attached comments as my supplemental statement.

Again, I wish to thank the Subcommittee for the opportunity to express the views of the members of the Alliance on the issues raised during the Subcommittee hearing.

The prepared statement of Professor Gary Roberts ("Roberts") contains a number of misstatements about the requirements of the antitrust laws and justifications for the Alliance, is beset with internal contradictions, and ignores the distinction between the antitrust laws' concern with protection of competition versus protection of specific competitors. These errors are ultimately reflected in his conclusion, which argues that the Alliance is "pernicious" not because it violates the antitrust laws but because it is antithetical to undefined "true values" of higher education. We deal with each of these errors below.

1. THE ALLEGED ANTICOMPETITIVE EFFECTS AND LESS RESTRICTIVE ALTERNATIVES ARE ERRONEOUSLY IDENTIFIED AND MEASURED AGAINST THE WRONG BASELINE

Roberts' initial error is to measure alleged anticompetitive effects of the Alliance against some idealized system in which all bowls and conferences engage in an open bidding process every year. Such a system did not exist before the formation of the Alliance or the predecessor Bowl Coalition and, in fact, has not existed in college football in the past 50 years. A proper antitrust analysis would measure effects of the Alliance against the real-world bowl system that it supplanted and that would almost certainly return in its absence.

Roberts suggests that the bowl system existing before the formation of the Bowl Coalition and Alliance arrangements was somehow not the product of "free market" forces. (Roberts Statement (hereinafter "Statement") at 4 n.1.) This suggestion cannot be supported. As Roberts correctly notes, in past years, a number of individual conferences had agreements with individual bowl games. Both the Big Ten and Pac-10 had and still have agreements to send their champions to the Rose Bowl. The Southeastern Conference had an agreement to send its champion to the Sugar Bowl. The former Southwest Conference had an agreement to send its champion to the Cotton Bowl, and the former Big Eight Conference had an agreement to send its champion to the Orange Bowl in Miami. Each of these agreements was individually negotiated between a conference and a bowl. None of these arrangements was the product of collective activity among several conferences.

Under recognized antitrust principles, each of these conferences was and is free to enter into such arrangements with particular bowl games. These agreements existing before formation of the Alliance were essentially vertical arrangements in which one conference promised to supply one of its teams (its conference champion) to a given bowl game. A bowl entering into one of these arrangements would not have done so had it not perceived itself as better off with the agreement than without it. Indeed, from these agreements sprang traditional relationships between certain bowls and conferences that made these games especially attractive and that contributed to excitement of intra-conference championship races. While Roberts' written statement carefully avoids suggesting that these arrangements are illegal under the antitrust laws, his suggestion that these agreements were not the product of free market forces is patently erroneous.[1]

Using his approach, Roberts identifies three anticompetitive effects allegedly resulting from the Alliance arrangement. First, he claims that the Alliance relegates those Division I–A teams that are not members of the Alliance conferences and those bowls that are not part of the Alliance arrangement to a permanently inferior status. Second, he claims that the Alliance results in "monopoly" pricing for the most attractive bowl games.[2] Roberts ultimately concedes, however, that "monopoly" pricing, as he defines it, is an inevitable result of the creation of a national championship game, (Statement at 18–19).[3] Third, Roberts claims that the Alliance decreases the output and product quality of college football, but his argument is wholly unsupported. If output is measured by the total number of bowl games (or total number of college football games, both regular season and postseason), the Alliance arrangement has absolutely no impact on output. If it is measured by fan appeal and the willingness of television networks and bowl sponsors to pay for the Alliance product, then output has increased. Ultimately, Roberts identifies only one anticompetitive effect from the Alliance arrangement: its supposed harmful effect on non-Alliance conferences and institutions and bowls not included in the Alliance rotation of games.

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[1] Both the Western Athletic Conference ("WAC") and Conference USA, for whom Roberts expresses solicitude, have agreements for their particular champions to participate in particular bowl games. During the first few years of the Fiesta Bowl's existence, the WAC had an arrangement under which its champion hosted that game. Subsequently the WAC entered into an arrangement to send its champion to the Holiday Bowl in San Diego. The WAC is now party to an arrangement under which its champion is guaranteed a slot in either the Holiday Bowl or the Cotton Bowl. Conference USA has an agreement for its conference champion to host the Liberty Bowl.

[2] His second claimed anticompetitive effect is based on a number of erroneous assumptions. It assumes, for example, that particular college football bowl games are a relevant antitrust market. That assumption is wrong. Roberts also mischaracterizes the added value resulting from the Alliance arrangement as a "monopoly" rent. Roberts apparently reaches this conclusion by noting that in "perfect competition," (Statement at 14), the fee to institutions competing in the Alliance bowls would be their marginal cost of playing in the contest. The Alliance has never claimed that college sports and other forms of entertainment fall within the textbook model of "perfect competition," and the antitrust laws do not require that markets operate in accordance with that model. Indeed, if that were the standard, virtually all sports leagues and other kinds of entertainment would be replete with "monopoly" pricing, as would virtually every market in the United States.

[3] Roberts would deal with this alleged "monopoly" pricing problem in one of two ways. He would either have some form of government regulation of pricing for bowl games, (Statement at 18–19 & n.4), or have the NCAA or some other organization redistribute the money reaped from the national championship game among all of the Division I–A institutions. (Statement at 19). Thus, while Roberts takes the position that wealth transfers are an anticompetitive effect, (Statement at 13), he apparently has no objection if the alleged wealth transfer is redistributed

In support of this position, Roberts argues that the Alliance is an "essential facility" and that lack of access to the "facility," (Statement at 9), will eventually reduce output because non-Alliance institutions will purportedly be driven "into permanent second-tier status or out of the 'business' altogether." (Statement at 7). He paints a doomsday scenario in which non-Alliance institutions abandon football altogether or drop into a lower tier because they will be unable to recruit against institutions in the Alliance conferences or Notre Dame. The root of this alleged evil is the growing disparity in revenues between those institutions in the Alliance conferences and non-Alliance institutions. (Statement at 7). This is unadorned speculation.

Indeed, the experience of Notre Dame stands as a precise counter to Roberts' allegations. Notre Dame has agreed to participate in the Alliance arrangement, but it does not have a guaranteed slot in any Alliance bowl game. In fact, since Notre Dame has never been a member of a football conference, it has never been guaranteed the opportunity to compete in any bowl game. Even member institutions of the WAC and Conference USA can guarantee recruits that their champions will play in a bowl game every season. Notre Dame, because it is an independent, cannot do so.[4] Yet that has not prevented Notre Dame from building one of the most successful and storied programs in all of college football. Notre Dame is able to recruit elite athletes and even has its own network television contract. Notre Dame, in effect, has simply done a better job of competing in the building of a football program than many of the institutions in Division I–A. The argument that the Alliance arrangement, therefore, somehow precludes other institutions from similar success is specious.

Notre Dame is not alone in that regard. For years, a number of highly successful football programs were built by institutions that were not members of any football conference. Penn State won two national championships and finished undefeated on three other occasions while an independent. Florida State, while an independent institution, lifted itself from a doormat in the mid-1970s to a national power by the end of the decade. The University of Miami similarly rebuilt its program in the 1980s while an independent institution and won or shared four national titles between 1983 and 1991. All of these institutions have now joined one of the Alliance conferences. Nonetheless, their success indicates that a guaranteed bowl slot in any game is not necessary to build a championship caliber program. In fact, in the mid-1970s and early 1980s, while Miami and Florida State were resurrecting programs without any guaranteed bowl slots, member institutions of the WAC could tell potential recruits that a conference championship would give them an automatic slot in the Fiesta Bowl or later in the Holiday Bowl.

Robert claims are also contrary to past college football history. For a half-century, the champions of the Big Ten and Pac-10 have been the only teams to compete in the Rose Bowl, the oldest, wealthiest, and most prestigious of all college football bowl games. Until recently, institutions in these conferences annually received substantially higher bowl payouts than institutions competing in any other bowl games. Yet that fact has not prevented other conferences from turning out championship caliber teams on an annual basis or recruiting top athletes.

Finally, Roberts ignores the indisputable fact that a championship caliber team in the WAC or Conference USA is better off under the Alliance arrangement than it ever was under the prior bowl system. In 1984, Brigham Young finished the season undefeated and ranked number 1 in the major wire service polls. However, instead of playing in a New Year's Day bowl game against a highly ranked opponent for a substantial payout, Brigham Young played in the Holiday Bowl against a 6–

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among all Division I–A institutions in what he considers to be a more equitable fashion. This is another one of the internal contradictions in his testimony. See infra Section 2.

[4] Each year Notre Dame must win the requisite number of games required by NCAA rules to qualify for participation in a postseason bowl game and be attractive enough to bowl committees to obtain a bowl invitation. Undoubtedly, Notre Dame's traditional excellence and fan appeal will often make it attractive to bowl selection committees when it qualifies for a bowl game, but those factors are wholly unrelated to the Alliance arrangement and existed long before the Alliance was formed.

5 Michigan squad for a relatively smaller payout. Today, if Brigham Young were to repeat its 1984 performance, it would be guaranteed a slot in an Alliance Bowl to play for the national championship.[5] In addition, every non-Alliance institution may compete for one of the two at-large slots in the arrangement. Thus, from the perspective of those institutions, the bowl system is more open now than it ever has been. When the Rose Bowl joins the new Alliance arrangement after the 1998 regular season, that game will be open to institutions outside the Big Ten and Pac-10 for the first time since the end of World War II.

Roberts also claims that the Alliance bowl elevates four bowls to premier status and relegates the remainder to "permanent second-tier status" of little interest to consumers. (Statement at 10). This argument is also wrong. At the time the current Alliance was formed, the Alliance sought bids from every NCAA-certified bowl, except the Rose Bowl, for the three Alliance bowl slots. Nine bowls responded. There was open competition to be included in the Alliance arrangement. Furthermore, the arrangement is of short duration. The current contract is for three years, and the new Alliance arrangement will have an initial term of four years. There will be other opportunities for a bowl outside the arrangement to replace a bowl currently participating in the Alliance. Thus, the Alliance does not relegate any bowl to "permanent second-tier status."

The use of an improper baseline to measure anticompetitive effects also leads Roberts astray in his analysis of less restrictive alternatives. Roberts is correct that the doctrine of less restrictive alternatives is not well-defined in the case law, but no sound "less restrictive alternatives" doctrine can possibly be built on notions not grounded in marketplace realities. The "less restrictive alternative" Roberts advocates is the creation of a national championship game, presumably by the NCAA or some other governing body, that will rotate around among several bowl games. Once that game is filled, then all other bowls would compete openly for the remaining teams.

It is impossible to see how this is a "less restrictive alternative" or would work in practice. It would depend upon a collective agreement among all NCAA Division I-A institutions not to deal with any bowl game until the national championship game participants had been determined. No individual arrangements, like those currently existing between the WAC and the Cotton and Holiday Bowls, would be permissible. The parties to this collective agreement would have far more market power than Roberts asserts for current members of the Alliance. The agreement could only be enforced by sanctions for violations imposed by the NCAA or some other governing body.

But, one of the reasons for the conference/bowl affiliation agreements that existed in the pre-Alliance era was to facilitate rational planning by the bowls and conferences for the production of the game and the many ancillary activities related to the game, including parades, parties, and events. That benefit would be lost under the Roberts "alternative."

Further, for several years, the NCAA attempted to prevent bowls from extending invitations to teams to fill open slots before a given date. The rule was easily circumvented as bowls often made *de facto* team selections early in the year, before a full season's results were complete. The games resulting from this process did not always produce the best possible matchups. Indeed, teams that went on a late season losing streak occasionally ended up in the most highly regarded bowl games based on commitments made earlier in the season—a process that harmed consumers. Roberts' "less restrictive alternative" would require, on the one hand, far more restrictive regulation than any that exists today and would, on the other hand, likely lead to even more chaotic conditions than existed before the Alliance. It is significant that his "alternative" did not appeal to any of the other witnesses appearing before the Subcommittee.

2. INTERNAL CONTRADICTIONS IN THE ROBERTS STATEMENT

Roberts' argument about anticompetitive effects and less restrictive alternatives are also based on a number of internal contradictions. At one point, for example, he admits that many college football fans are "to a great extent motivated by emotional loyalty to a particular school," and that they may care more about their particular teams than they do "a great game between two powerful football teams." (Statement at 6). This parochial fan interest explains the appeal of intraconference championship races and the rivalries they generate. It also explains the appeal of certain conference/bowl affiliation agreements that existed before the Alliance arrangement and demonstrates why so-called second-tier bowls survive. The Alliance strengthens these traditional allegiances even as it opens up the bowl system.

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[5] While much has been made of the fact that no Alliance bowl selected Brigham Young as an at-large team despite its high ranking this past season, Brigham Young did play in the Cotton Bowl on New Year's Day, the first time in school history that the football team had competed in a New Year's Day bowl game.

Roberts, however, then ignores this factor entirely in painting his scenario under which the non-Alliance conferences and bowls wither away. His characterization of the Alliance as an "essential facility" is flatly inconsistent with his view that consumers care more about particular teams than two powerful teams playing a great game.

Roberts' "less restrictive alternatives" plan suffers from the same infirmity. Roberts notes that non-Alliance institutions currently have access to the Alliance bowls, which he has labeled an "essential facility." Thus, the Alliance bowls can select a non-Alliance team if they so choose and must do so if a non-Alliance institution is one of the top two teams in the country. When an Alliance bowl chooses another team over a non-Alliance institution, that is a decision of the individual bowl and its selection committee. It reflects that bowls assessment of the relative merits of the available teams—which presumably include the commercial factors, like fan appeal, which Roberts deplores. But he does not explain why the bowls, under his "less restrictive" system, will not continue to act in the same fashion as they have.

3. BLURRING THE DISTINCTION BETWEEN INJURY TO COMPETITION AND INJURY TO COMPETITORS

While professing solicitude for the competitive process, Roberts confuses injury to competitors with injury to competition. The antitrust laws exist to protect the competitive process, not specific parties who must compete as part of that process. Thus, even if one were to argue that the Alliance arrangement has strengthened some conferences and institutions while weakening others and strengthened some bowls while weakening others—arguments that the Alliance does not concede—it still would not violate the antitrust laws. As previously noted, market output measured by the number of bowl games remains unchanged by the Alliance, and output measured by fan interest (which is in turn measured by the willingness of bowls, television networks, and sponsors to pay for the Alliance bowl games) indicates that output has increased.

Roberts later comes close to acknowledging this fact by admitting that the alleged injuries suffered by the WAC and Conference USA might not constitute antitrust injury. (Statement at 25–26). This is a devastating admission. The antitrust injury doctrine exists to ensure that the rationale for granting relief under the law corresponds with the reason for finding a violation in the first place. *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U.S. 328, 342 (1990) In other words, the injury suffered by an antitrust plaintiff must flow from the activity that harms competition. Roberts' acknowledgment that the WAC and Conference USA may not have suffered antitrust injury is simply another way of saying that their supposed injury is not injury to competition at all.

Aside from this substantive flaw in his argument, Roberts also makes a procedural error. In describing the analytical process under the rule of reason, Roberts states that, once the plaintiff demonstrates anticompetitive effects flowing from an agreement, the defendant must demonstrate "by clear and convincing evidence" that the benefits of the arrangement outweigh its anticompetitive effects. (Statement at 16–17). Roberts cites absolutely no authority for transferring such a heightened standard of proof to a defendant in an antitrust action.

4. THE DISCUSSION OF "TRUE VALUES"

After spending twenty pages describing in detail his reasons for believing that a jury in an antitrust case would find against the Alliance, while conceding that the outcome is unpredictable, Roberts concludes by saying that none of these arguments matter. "College sports is not supposed to be about commercialism or even maximizing consumer welfare." (Statement at 20). Instead, the Alliance is "fundamentally pernicious," (Statement at 27), because it conflicts with Roberts' views of the "true values" of college sports.

It is true that college sports embody some values that are different from those that prevail in a purely commercial context. The courts' sensitivity toward those values is precisely the reason why the antitrust laws permit arrangements in college sports that might not be acceptable in other contexts. See *NCAA* v. *Board of Regents*, 468 U.S. 85, 101–02 (1984) (discussing need for agreements among competitors to protect the "integrity" of college athletics).

But Roberts is wrong when he assumes that his vision of an ideal system is the only one that will promote these "true values," or the only one that will pass antitrust scrutiny. The people representing the Alliance conferences and their member institutions have a keen interest in the welfare of student-athletes and in the preservation of the academic missions of the universities they represent. Indeed, many of these individuals have spent their lives in many levels of college athletics, participating as student-athletes, coaches, and administrators. But they also have had to deal with the real-world bowl system that existed before the Alliance arrangement was formed. They have labored to make the selection procedures for the Alliance as fair and open as possible while weighing a number of competing interests. The Alliance members have acknowledged that the Alliance is not perfect and never will be. But its validity, both from an antitrust perspective and from the perspective of the values of college athletics, must be judged in the context of realistic alternatives and marketplace realities. Roberts' proposals fail on both counts.

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